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Withholding of Tax on Nonresident Aliens and Foreign Corporations

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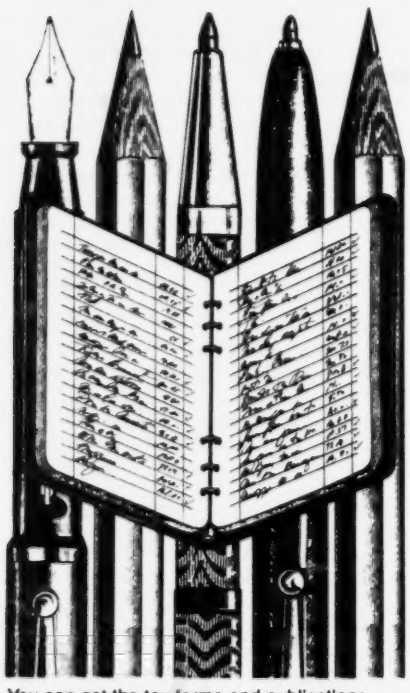

You can get the tax forms and publications referred to in this publication by writing to the IRS Forms Distribution Center listed in your Form 1040 or 1040A Instructions. Or, you can call the Tax Information number in the phone book listed under "United States Government, Internal Revenue Service."

Introduction

If you control, or are responsible for the receipt, disposal, custody, or payment of the items of income discussed in this publication, you must withhold income tax on them as required by law. If you are required to withhold the tax, you become the taxpayer liable for its payment, especially if the alien who receives the income fails to satisfy the U.S. tax liability. You may be a tenant, manager, broker, agent, fiduciary, or even a spouse, but if you meet the withholding requirements, you are a withholding agent liable for the tax discussed here.

This publication is designed to help you understand your obligations as a withholding agent. It does not discuss the responsibilities of the recipient of the income in filing an income tax return. If you need further help, contact the Office of International Operations, Internal Revenue Service, Washington, D.C. 20225.

Withholding of Tax

Most income that ***is effectively connected*** with the conduct of a trade or business in the United States by a nonresident alien individual or a foreign corporation is subject to the same income tax rates that apply to U.S. citizens, residents, and domestic corporations.

Investment and other fixed or determinable annual or periodic income from sources within the United States, such as wages, rents, dividends, and interest, that ***is not effectively connected*** with the conduct of a trade or business in the United States is subject to a 30% tax rate (or lower treaty rate) whether or not the taxpayer engages in a trade or business in the United States.

For example, withholding at a 30% (or lower treaty) rate is required on payment of rents, dividends, interest, and other fixed or determinable annual or periodic income from sources within the United States. If any such income is effectively connected with the conduct of a trade or business in the United States, the person entitled to the income may claim exemption from withholding by filing a statement to that effect with the withholding agent. See *Form 4224*, discussed later.

Withholding Agent

Any person required to withhold the tax is a withholding agent. A withholding agent may be an individual, a trust, estate, partnership, corporation, government agency, association, or tax-exempt foundation, whether domestic or foreign. Withholding agents include U.S. citizens and residents, and also foreign nominees and fiduciaries that are residents of treaty countries that require their nationals to withhold additional U.S. tax in accordance with the tax treaty provisions.

The capacity in which the withholding agent acts is immaterial. An agent may be making payments on the agent's own behalf as a lessee or mortgagor of real or personal property, or other obligor, or an agent may be paying on behalf of another fiduciary, etc.

Generally, the person that pays or conveys the item of U.S. source income to an alien entity or person, or to the entity or person's foreign or domestic agent, is liable for the tax and must withhold.

For example, the local U.S. promoter of an event featuring a nonresident alien performer is ordinarily the withholding agent. However, in the case of an extensive tour of the United States, a corporation or agency representing the performer may become the withholding agent for the entire tour if satisfactory arrangements are made with the Internal Revenue Service. Similarly, the spouse of a nonresident alien, if the spouses are domiciled in a community property State, is required to act as a withholding agent for the nonresident alien's community interest in the spouse's income arising from within the United States.

Domestic partnerships are required to withhold tax on items of income discussed in this publication that are included in the distributive share of a member of the partnership who is a nonresident alien individual or a foreign corporation. Also, resident or domestic fiduciaries are considered as withholding agents on payments to beneficiaries who are nonresident alien individuals, foreign partnerships, or foreign corporations.

A former spouse is required to withhold tax on alimony or other payments to the other former spouse, if the spouse receiving the payments is a nonresident alien at the time the payments are made.

Foreign nominees and fiduciaries. Under tax treaties, a foreign nominee or fiduciary in a treaty country may be required to withhold additional U.S. tax from U.S. source dividends (and coupon bond interest in the case of Switzerland) when the person for whose account the payments were received is not entitled to a reduced rate or exemption under the treaty.

For example, a Swiss nominee is required under Swiss law to withhold 30% of the gross dividend minus the 15% which has been withheld by the withholding agent in the United States.

Except in the case of Canada, foreign nominees and fiduciaries are required to send the additional U.S. tax withheld to their own tax authorities, accompanied by whatever form may be prescribed by their national tax agencies. In turn, treaty tax authorities remit the additional tax to the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255.

Canadian nominees and fiduciaries send the additional U.S. tax withheld, in U.S. currency, directly to the Internal Revenue Service Center in Philadelphia, accompanied by an annual Form 1042 tax return. The U.S. deposit rules, discussed later, do not apply to these foreign withholding agents.

Persons Subject to Withholding

Nonresident alien individual. An individual, whose residence is not within the United

States and who is not a U.S. citizen, is a nonresident alien individual. The term includes a nonresident alien fiduciary.

An alien actually present in the United States, who is not a mere transient or sojourner, is a U.S. resident for income tax purposes. Whether an alien is a transient is determined by the alien's intentions with regard to the length and nature of the stay. A mere floating intention, indefinite as to time, to return to another country is not sufficient to establish the alien as a transient. If the individual lives in the United States and has no definite intention as to length of stay, the alien is a resident.

One who comes to the United States for a definite purpose that may be promptly accomplished is a transient. However, if an extended stay is necessary to accomplish this purpose, and the alien makes a home temporarily in the United States, the alien becomes a resident even though the intention is to return to the domicile abroad when the purpose for which the individual came is achieved or abandoned.

An alien whose stay in the United States is limited to a definite period by the immigration laws is not a resident of the United States in the absence of exceptional circumstances.

If an alien has resided in the United States for as much as one year, a rebuttable presumption exists that the individual is a resident alien.

Nonresident alien individuals married to U.S. citizens or resident aliens may choose to be treated as resident aliens for income tax purposes. However, these individuals are considered nonresidents for purposes of withholding taxes on nonresident alien individuals.

A foreign corporation or partnership means one that is not domestic. A ***domestic corporation or partnership*** means one that was created or organized in the United States or under the laws of the United States or of any state or territory. A corporation created or organized in Guam or under the laws of Guam is not considered a foreign corporation for purposes of the 30% tax and the withholding rules.

Resident of Puerto Rico. Even though an alien may be a bona fide resident of Puerto Rico for the entire year and be required to pay taxes generally in the same manner as a U.S. citizen, the alien is treated as a nonresident alien for the withholding rules explained here. Of course, this individual will be entitled to a credit against U.S. income tax for any income tax withheld under these rules.

A nonresident alien trustee, administrator, or executor of a trust or an estate is treated as a nonresident alien individual, even though all the beneficiaries of the trust or estate are citizens or residents of the United States.

Foreign private foundation. A private foundation that was created or organized under the laws of a foreign country (or a U.S. possession) is a foreign private foundation. Gross investment income paid to such a qualified foreign private foundation is subject to withholding of the 4% excise tax rather than the ordinary statutory 30% income tax. For further information on foreign private foundations, see Publication 578, *Tax Information for Private Foundations and Foundation Managers.*

Other foreign organizations, associations, and charitable institutions. An organization that would be exempt from income tax under the Internal Revenue Code if it were created or organized under the laws of the United States, any state, or the District of Columbia, is treated as a foreign tax-exempt organization when it has been organized or created under the laws of a foreign country or a U.S. possession. Generally, withholding is not required on payments of income to such foreign tax-exempt organizations if the Internal Revenue Service has determined that they are not foreign private foundations.

Payments to such organizations, however, must be reported on Form 1042S, even though no tax is required to be withheld.

Withholding is required on the unrelated business income (as defined in Publication 598, *Tax on Unrelated Business Income of Exempt Organizations*) of foreign tax-exempt organizations to the same extent that similar income would be subject to withholding.

Withholding Exemptions and Reductions

Aliens, by reason of their alien status, are presumed to be nonresidents. Therefore, the withholding agent should withhold any required tax if indications exist that the individual, or the fiduciary, to whom the agent is to pay the income is an alien. Failure to do so does not relieve the withholding agent from liability for payment of the tax, especially if the alien fails to satisfy the U.S. tax liability.

Evidence of residence. If an individual submits a written statement, in duplicate, stating the individual is a citizen or resident of the United States, absent knowledge to the contrary the withholding agent may accept this statement and is relieved from the duty of withholding the tax. Alternatively, an alien may claim U.S. residence by filing Form 1078, *Certificate of Alien Claiming Residence in the United States*, in duplicate, with the withholding agent. Holders of visas which do ***not*** permit permanent residence in the United States should consult the nearest office of the Internal Revenue Service for advice about the propriety of filing a Form 1078 and, if filing Form 1078 is proper, about the need to file a declaration of estimated tax.

It is within the discretion of a U.S. bank that is a payer of income subject to withholding to decide whether to accept an individual's proof of U.S. citizenship or residence furnished through a foreign bank to which income is paid. If the U.S. bank accepts this proof, the withholding agent will not be liable for payment of tax if later it is disclosed that the individual was in fact a nonresident alien. If it accepts the proof, however, the U.S. bank is required to file an information return on Form 1042S indicating the name, address, identifying number, and the particular securities of the actual owner, and indicating that it is relying on proof submitted by the foreign bank as its basis for not withholding.

Partnerships and corporations. A written statement from a partnership or corporation claiming that it is not foreign may be relied upon by the withholding agent as proof that the partnership or corporation is domestic, and thus, is not subject to withholding tax. The statement must be furnished to the withholding agent in duplicate. It must contain the taxpayer's employer identification number, the address of the taxpayer's U.S. office or place of business, and it must be signed by a member of the partnership or by an officer of the corporation. The official title of the corporate officer also must be given.

Disposition of statements and Form 1078. The withholding agent must forward the duplicate copy of each statement or form, together with a letter of transmittal, to the Internal Revenue Service Center, Philadelphia, PA 19255.

Withholding Exemption—Undue Administrative Burden. No withholding is required from income paid to a foreign partnership or corporation engaged in trade or business in the United States if the foreign partnership or corporation establishes to the satisfaction of the Director of International Operations that withholding would impose an undue administrative burden for the tax year and that the collection of the tax will not be jeopardized by the exemption from withholding.

The withholding exemption is available to a foreign partnership or corporation only if a determination is received from the Director of International Operations stating that the exemption applies. A copy of the determination is furnished to the withholding agent by the foreign partnership or corporation.

Generally, withholding will be considered to impose an undue administrative burden only if:

1) The person entitled to the income, such as a foreign insurance company, receives from the withholding agent income on securities issued by a single corporation, some of which is, and some of which is not, effectively connected with the conduct of a trade or business within the United States, and
2) The criteria for determining the effective connection are unduly difficult to apply because of the circumstances under which the securities are held.

Withholding requirements for inhabitants of Virgin Islands. No withholding is required for payments to a person who at the time of payment reasonably expects to satisfy the income tax obligations for that particular income under section 28(a) of the Revised

Organic Act of the Virgin Islands. That section provides that all persons who are permanent residents of the Virgin Islands will satisfy their U.S. tax obligations by paying into the Treasury of the Virgin Islands their tax on income derived from all sources both within and outside the Virgin Islands. For this purpose the term person includes an individual, partnership, and corporation.

To avoid withholding, a payee must notify the withholding agent by letter, in duplicate (a separate letter is required each year), that the payee expects to satisfy U.S. income tax obligations on all income to be paid by the withholding agent during the calendar year under section 28(a) of the Revised Organic Act of the Virgin Islands. This letter of notification constitutes authorization for the withholding agent to pay the income for the calendar year without deducting the tax. The duplicate copy of each letter of notification must be forwarded by the withholding agent, with a letter of transmittal to the Internal Revenue Service Center, Philadelphia, PA 19255.

Withholding on income effectively connected with a trade or business in the United States. No withholding is required for any item of income if:

1) The income is effectively connected with the conduct of a trade or business in the United States (see definition later) by the person entitled to the income,
2) The income is includible in the recipient's gross income, and
3) A statement claiming exemption, such as Form 4224, has been filed by the person entitled to the income, as discussed later.

This ***no withholding*** rule applies to income for services performed by a foreign partnership or foreign corporation (other than a corporation described in the following discussion), but does ***not*** apply to compensation for personal services performed by an individual.

Withholding ***is required*** in the case of a foreign corporation:

1) Which otherwise qualifies as a personal holding company for income tax purposes,
2) Which receives amounts under a contract for personal services of an individual whom the corporation has ***no*** right to designate, and
3) Of which 25% or more of the outstanding stock at some time during the tax year is owned, directly or indirectly, by or for an individual who has performed, is to perform, or may be designated as the one to perform, the services called for under the contract.

Definition of income effectively connected. Generally speaking, when a nonresident alien individual or foreign corporation engages in a trade or business in the United States, all income from sources within the United States other than fixed or determinable annual or periodic income (such as wages, interest, dividends, and rent) and certain similar amounts are considered effectively connected with the conduct of a U.S. business. Fixed or determinable annual or periodic income and similar amounts may or may not be effectively connected with a U.S. business.

The factors to be considered in establishing whether fixed or determinable annual or periodic income and similar amounts from U.S. sources are effectively connected with the conduct of a U.S. trade or business include:

1) Whether the income is derived from assets used in or held for use in the conduct of that trade or business, or
2) Whether the activities of that trade or business were a material factor in the realization of the income.

For example, when foreign source interest income is earned by foreign banks or financing companies in the United States, the question is not whether such interest is to be taxed at ordinary rates or at flat rates, but whether the interest is to be taxed by the United States at all. In this situation, it must be determined whether the income is effectively connected with the active conduct of the U.S. banking, financing, or similar business.

When the taxpayer's U.S. office performs all the significant tasks relating to the negotiation and acquisition of securities, with the sole exception of the storage of securities, the interest income from the securities is attributable to the taxpayer's U.S. office.

Form 4224. Nonresident alien individuals, foreign partnerships, or foreign corporations engaged in trade or business within the United States at any time during their tax year must notify their withholding agents as to the items of income for the tax year that will be effectively connected with the conduct of a trade or business within the United States. This can be done by using Form 4224, *Exemption from Withholding of Tax on Income Effectively Connected with the Conduct of a Trade or Business in the United States*, which may be obtained from most Internal Revenue Service offices or from the Director of International Operations, Internal Revenue Service, Washington, D.C. 20225.

The duplicate of Form 4224 is to be attached by the withholding agent to the Form 1042S filed on behalf of the recipient.

Treaty Benefits

Residents of certain foreign countries may be entitled to reduced rates of, or exemption from, tax under an applicable tax convention between the country of which they are residents, and the United States. These foreign residents, generally, are required to notify the withholding agent that they are residents of a country with which the United States has an income tax convention and that they, therefore, qualify for reduced rates of, or exemption from, income tax withholding. Procedures for establishing these qualifications with the withholding agent are discussed here. The exemptions from, or reduced rates of, U.S. tax vary between countries and as to specific items of income. As a result the withholding agent, before disbursement of such income, must consult the provisions of the tax treaty that apply to the country of the nonresident taxpayer to whom the payment is being made.

If an applicable treaty does not cover a particular type of income, or if no treaty exists with the country of which the alien is a resident, the withholding agent must withhold on the income at the statutory rates shown in this publication. If the payment of income is covered by a treaty, however, provisions of that treaty are to be followed.

Convenient tables at the end of this publication show the countries with which the United States has income tax treaties, and the rates of withholding applicable in cases where all conditions of the particular treaty articles have been satisfied.

Foreign payee's status. If, as a withholding agent, you are not able to readily ascertain the relationship between yourself and a foreign payee or the relationship of a foreign payee and a foreign corporation in any situation, you should withhold at a rate of 30% from the amount paid for the services rendered.

If a tax treaty to which the United States is a party provides an exemption from, or a reduced rate of, withholding for items of income, the withholding agent should follow the procedures discussed in this section.

A foreign payee may claim an exemption or reduced tax rate by filing Form 1001, *Ownership, Exemption, or Reduced Rate Certificate.* In the case of income (other than dividends, compensation for personal services, coupon bond interest and dividends payable on bearer stock certificates) that is subject to a reduced rate of tax or exemption from withholding under an income tax treaty, Form 1001 should be filed as soon as practicable for any period of 3 successive calendar years during which such income is expected to be received.

A separate Form 1001 must be used for each type of income. This is true except in the case of a payee claiming the benefit of an income tax treaty for income received from a trust, estate, or investment account. In the case of income received from a trust, estate, or investment account, a separate Form 1001 must be used for each different trust, estate, or investment account.

If, after filing Form 1001, an owner ceases to be eligible for the benefits of the convention for such income, the owner must promptly notify the withholding agent by letter. When any change occurs in the ownership of the income as recorded on the books of the payer, the exemption from, or reduction in the rate of, withholding of U.S. tax no longer applies unless the new owner of record also is entitled to a reduced or exempt rate of tax under a convention and properly files Form 1001 with the withholding agent.

When a withholding agent has reason to know that an owner of income is not eligible

for treaty benefits claimed on a Form 1001, then such form should not be considered effective and withholding at the statutory rate should be carried out. However, prior to the time when a withholding agent has reason to have such knowledge, the agent is not responsible for misstatements made on a Form 1001 by an owner of income.

Dividends. Form 1001 is not required to be filed by a foreign payee who receives only dividends. The withholding agent generally may rely on the payee's address of record as the basis for allowing the benefit of an applicable income tax treaty.

Coupon bond interest and dividends payable on bearer stock certificates. Since coupons for interest payable on bonds, debentures, and similar evidences of indebtedness (including tax-free covenant bonds) and dividends payable on bearer stock certificates are payable to the bearer, it is necessary that the payer ascertain each time a coupon is presented for payment whether the payee is subject to withholding. The payee is subject to withholding at the highest rate applicable to either the payee or the owner of the bond or stock certificate if the owner and payee are not the same. Form 1001 combines the information necessary to show the identities of the payee and the owner with the data required if either is a foreign payee and claims the benefit of a tax treaty.

Foreign payees ordinarily must file a separate Form 1001 each time a coupon is presented for payment for each issue of bonds of a corporation or each time interest is paid on obligations of the United States or its agencies or instrumentalities. Form 1001 also is required each time a dividend is paid on a bearer stock certificate.

Compensation for personal services. Provision is made in most treaties, to which the United States is a party, for at least partial exemption if compensation (or remuneration) for labor or personal services performed in the United States is received by a qualifying individual from the treaty country. In most cases, the qualifying individual must be a resident of the treaty country although, in some cases, the individual must be a citizen of the treaty country.

Under the treaty with Canada, for example, compensation received by a resident of Canada for personal services (including professional services) performed in the United States during the tax year is exempt from U.S. income tax if the Canadian resident is in the United States for not more than 183 days during the tax year and the individual's compensation does not exceed $5,000.

Another provision (or some variation of it) found in many treaties exempts from U.S. tax, remuneration received by a professor or teacher from a treaty country who is present in the United States temporarily for a specified activity, but only remuneration resulting from that specified activity. Still another provision (or some variation thereof) contained in several treaties exempts from U.S. tax, remittances received from abroad by a student or apprentice for maintenance or studies in the United States.

Refer to *Table 3* at the end of this publication for treaty provisions that provide for partial or complete exemption from U.S. income taxes for compensation paid for personal services rendered, compensation paid to certain persons teaching or engaging in research, and amounts received by students and trainees.

A statement must be furnished by the person entitled to receive salaries, wages, remuneration, or any other compensation for personal services performed within the United States for any exemption from either the 30% withholding or the graduated withholding to apply for any tax year.

The person must file with the withholding agent or employer, as the case may be, a statement for the tax year, in duplicate, giving name, address, and taxpayer identifying number and certifying:

1) The individual is not a citizen or resident of the United States,
2) The remuneration to be paid during the tax year is, or will be, exempt from income tax, and
3) The reason the remuneration is exempt from tax.

If the compensation or remuneration is claimed to be exempt from tax under a provision of an income tax convention, the statement also must indicate the provision and tax convention under which exemption is claimed, the country of which the person (or employee) is a resident, and sufficient facts to justify the claim for exemption. Although no particular form is prescribed for this statement it must:

1) Be dated,
2) Identify the tax year for which it is to apply and the compensation or remuneration to which it relates,
3) Contain the signature of the person (or employee) entitled to the compensation, and
4) Contain, or be verified by, a written declaration that it is made under the penalties of perjury.

The duplicate copy of each statement must be attached to the Form 1042S required to be filed by the withholding agent (or the employer) for such compensation or remuneration.

Special events and promotions. Withholding at the full 30% rate is required for payments that represent gate receipts (or television or other receipts) from rock music festivals, boxing promotions, and other entertainment or sporting events made to a nonresident alien or foreign corporation unless the withholding agent has been specifically advised otherwise by letter from the Internal Revenue Service. One reason for this is that the partial or complete exemption provided by certain tax treaties usually is based upon factors not generally determinable until after the close of the tax year. Also, when an alien's services are furnished by a foreign corporation, the qualification for tax treaty benefits may not be readily ascertainable because of the need to resolve other issues such as:

1) The existence of an agency relationship rather than a bona fide employer-employee relationship,
2) The status of a foreign corporation as engaged or not engaged in trade or business in the United States, and
3) The possibility that business arrangements may constitute an assignment of income.

Income Subject to Withholding

To be subject to withholding, the income must be from ***sources within the United States.*** Except for compensation for personal services, the source means the place of origin. If the income is the result of personal service activity in the United States, it is from U.S. sources. The place where the services are performed determines the source of the income, regardless of where the contract was made, the place of payment, or the residence of the payer.

If the income is for personal services performed partly within the United States and partly outside the United States, an accurate allocation of income for services performed in the United States must be made. In most cases this allocation will be made on a time basis. That is, U.S. source income is the amount that results from multiplying the total amount of compensation by a fraction. The numerator of the fraction is the number of days services are performed within the United States. The denominator of the fraction is the total number of days of service for which the compensation is paid.

Example. Jean Blanc, a citizen and resident of Canada, is employed as a professional hockey player by a U.S. hockey club. Under Jean's contract, he received $28,500 for 165 days of regular season play during 1979. Of the 165 days, 132 days were spent performing services in the United States and 33 days performing services in Canada. The amount of U.S. source income is $22,800, computed as follows:

$$\frac{132}{165} \times \$28{,}500 = \$22{,}800$$

Wages received for services rendered inside the territorial limits of the United States and wages of an alien seaman earned on a coastwise voyage are regarded as from sources within the United States, as are wages or salaries for personal services performed on a mine or oil or gas well located or being developed on the continental shelf of the United States.

However, even though income arises from sources within the United States, withholding is not required in the following general situations:

1) The income is effectively connected with the conduct of a trade or business within the United States (or, under a treaty, is attributable to a permanent establishment in the United States) by a foreign payee entitled to the income, and the income is includible in the payee's gross income for the taxable year as effectively connected, and such foreign payee has filed a Form 4224 (or similar statement) and furnishes the payee's U.S. taxpayer identifying number. (***This exclusion does not apply,*** however, in the case of personal services performed by an individual or services performed by a foreign corporation that has personal holding company income.)
2) The income is paid to a foreign payee who is entitled under a tax treaty to exemption from withholding on the specified type of income and such payee has filed a Form 1001.
3) The income is not included in gross income under the Internal Revenue Code.

In general, every kind of ***fixed or determinable annual or periodic income*** from sources within the United States is subject to withholding unless specifically exempt under the Code or a tax treaty or unless that income is effectively connected with the conduct of a trade or business in the United States or, under a treaty, is attributable to a permanent establishment in the United States. These items of income subject to withholding include interest, dividends, rents, salaries, wages, premiums, annuities, compensation, remunerations, emoluments, gains, profits, and other kinds of income such as income from royalties.

Income is fixed when it is paid in amounts definitely predeterminable. Income is determinable whenever there is a basis of calculation for the amount to be paid. The income need not be paid annually if it is paid periodically, that is to say, from time to time, whether or not at regular intervals. The fact that a payment is not made annually or periodically does not, however, necessarily prevent its being fixed or determinable annual or periodic income.

A salesperson working by the month for a sales commission that is paid or credited monthly receives determinable periodic income. Such items as taxes, interest on mortgages, or premiums on insurance paid to or for the account of a nonresident alien landlord by a tenant, under the terms of a lease, constitute fixed or determinable annual or periodic income.

It is immaterial whether payment of income is in a series of repeated payments or in a single lump sum. Thus, $5,000 in royalty income would come within the meaning of the term whether paid in 10 payments of $500 each or in one payment of $5,000.

Income derived from the sale of property in the United States whether real or personal, is ***not*** fixed or determinable annual or periodic income.

A fee paid to a professional soccer player for "signing on"—with the effect of preventing any other team from negotiating with the player and preventing the player from negotiating with any other team—is in essence compensation for a covenant not to compete. The compensation is fixed or determinable annual or periodic income and the source is the place where the right to act is forfeited. Since the league is composed of both foreign and domestic teams, the fee is from sources partially within and partially outside the United States. Therefore, the portion of the fee that is from U.S. sources is subject to withholding. If a reasonable basis for an allocation of the fee does not exist, the entire sign-on fee is income from the United States and is subject to withholding.

Types of Income Subject to Withholding

To the extent that items constituting gross income from sources within the United States are not effectively connected with the conduct of a trade or business in the United States, withholding of 30% is required at the time of disposal or payment to the nonresident alien individual, foreign partnership, or foreign corporation.

Each of the following categories of fixed or determinable annual or periodic income is keyed to its identifying code number used on Form 1042S, and in most cases on *Tables 2 and 3* found at the end of this publication.

Interest

Interest paid by U.S. obligors—general (Income Code 1). This category includes interest paid or credited on bonds, debentures, notes, open account indebtedness, governmental obligations issued on or after March 1, 1941, interest on certain deferred payments as provided in Internal Revenue Code section 483, or other evidences of indebtedness of U.S. obligors (other than those specifically described later under Income Codes 2, 3, and 4). U.S. obligors include the U.S. Government or its agencies or instrumentalities and any U.S. resident, irrespective of whether the resident is a U.S. citizen or a business entity organized under the laws of the United States, a State, or the District of Columbia.

However, the following types of interest of U.S. obligors are not subject to withholding even though paid to a foreign payee.

Interest on deposits. Interest paid or credited to a nonresident alien individual or foreign corporation from the following is not subject to withholding:

1) Deposits (including certificates of deposit and other deposit arrangements) with persons carrying on the banking business,
2) Deposits or withdrawable accounts with savings institutions chartered and supervised as savings and loan or similar associations, if the interest is deductible by the institutions, or
3) Amounts left with an insurance company under an agreement to pay interest on them.

Payer deriving income abroad. Interest received from a resident alien individual or a domestic corporation is not subject to withholding provided that less than 20% of the payer's gross income from all sources has been derived from sources within the United States for the 3-year period ending with the close of the payer's tax year that precedes the payment of the interest, or for the applicable part of that period.

Bankers' acceptances. Income derived by a foreign central bank of issue from bankers' acceptances is not subject to withholding. A foreign central bank of issue means a bank that is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency. Such a bank generally is the custodian of the banking reserves of the country under whose laws it is organized.

Sales of bonds between interest dates. Tax is not required to be withheld on accrued interest paid by the buyer in connection with the sale of bonds between interest dates.

Income from U.S. Savings Bonds of residents of the Ryukyu Islands or the Trust Territory of the Pacific Islands. Tax is not required to be withheld on interest from a Series E or Series H U.S. Savings Bond if the nonresident alien individual acquired the bond while a resident of the Ryukyu Islands or the Trust Territory of the Pacific Islands.

Interest on bonds or debentures issued before April 1, 1972, in the form of original issue discounts is not subject to withholding. Also see the discussion of original issue discount later under *Capital gains.*

Interest on debt obligations (with maturities of 15 years or less) that the issuer elected to be subject to the interest equalization tax is not subject to withholding.

Interest on obligations of the United States received by a foreign central bank of issue or the Bank of International Settlements is not subject to withholding.

Withholding is required in the following situations.

If, in connection with the sale of a corporation's property, payment of the bonds or other obligations of the corporation is assumed by the assignee, that assignee, whether an individual, partnership, or corporation must deduct and withhold such taxes as would be required to be withheld by the assignor had no such sale or transfer been made. Also, in the event of defaulted interest coupons, the tax must be withheld on the gross amount of interest whether or not the payment constitutes a return of capital or the payment of income. Claims for refund may be filed.

A resident alien individual paying interest on a marginal account maintained with a nonresident foreign brokerage firm must withhold from such interest whether the interest is paid directly or constructively.

A foreign tax-exempt organization may claim exemption from withholding of tax on bond interest coupons presented for payment

in the United States, but will be subject to withholding for any tax year in which the organization is a private foundation.

Interest on bonds of a U.S. corporation paid to a foreign corporation not engaged in a trade or business in the United States is subject to withholding even though guaranteed by a foreign corporation that made payment outside the United States.

Domestic corporations must withhold on interest credited to foreign subsidiaries.

The dividend and interest exclusion of up to $200 for individuals does not reduce the amount of withholding. Withholding is figured on the total amount of the interest payment.

Interest on real property mortgages (Income Code 2). Because it is denied reduced rates or exemption under some tax treaties, interest paid or credited on real property mortgages is assigned a separate category for withholding purposes. This type of interest refers to that paid on any type of debt instrument that is secured by a mortgage or deed of trust on real property located in the United States—irrespective of whether the mortgagor (or grantor) is a U.S. citizen or a business entity organized under the laws of the United States, a state, or the District of Columbia.

Interest paid to a controlling foreign corporation (Income Code 3). Under some tax treaties, such as those with Greece and Ireland, interest paid by a U.S. corporation to a controlling foreign corporation is denied a reduced rate or exemption from withholding. This is interest that is paid or credited by a domestic corporation (as contrasted with a resident foreign corporation) on borrowings from a controlling foreign corporation. The interest may arise from any type of debt instrument, including open or unsecured accounts payable, notes, certificates, bonds, or other evidences of indebtedness. A controlling foreign corporation is a corporation of the treaty country that controls, directly or indirectly, more than 50% of the entire voting power of the paying corporation.

Interest paid by foreign corporation (Income Code 4). Interest paid by a foreign corporation with 50% or more of its gross income from all sources effectively connected with the conduct of a trade or business within the United States for the 3-year period (or shorter period if the corporation was not in existence for 3 years) ending with the close of its taxable year preceding the payment of the interest is, unless completely exempted from withholding under a treaty, subject to withholding in the same ratio as the gross income effectively connected bears to the gross income from all sources of the foreign corporation. If less than 50% of its gross income is effectively connected for such 3-year (or shorter) period, then the interest is not subject to withholding.

Statutory. In the absence of an applicable treaty provision, withholding at the statutory rate of 30% is required on the interest from foreign corporations that is attributable to the gross income effectively connected with the conduct of a trade or business within the United States.

Tax Treaties. There are different treaty provisions applicable to interest paid by foreign corporations. These provisions may exempt all or a part of the interest paid by foreign corporations. Some treaties provide for an exemption regardless of the payee's residence or citizenship; others provide for an exemption according to the payee's status as a resident or citizen of the payer's country. The specific treaty provision applicable to the payer's country should be checked. *Table 1* at the end of this publication provides a list of the Internal Revenue Cumulative Bulletins containing the tax treaties.

Interest on tax-free covenant bond (Income Code 5). The amount to be withheld for bond interest on tax-free convenant bonds ***varies.*** For information about these rates and the supporting evidence that may be required, see the instructions for Form 1001, *Ownership, Exemption, or Reduced Rate Certificate.*

Dividends

Dividends paid by U.S. corporation—general (Income Code 6). This category includes all distributions of domestic corporations (other than dividends paid by a U.S. subsidiary corporation to a foreign parent corporation—Income Code 7).

The gross amount of all corporate distributions paid to nonresident payees, to the extent treated as gross income from sources within the United States, is subject to withholding ***with certain exceptions.***

Corporate distributions. No tax is required to be withheld on a nontaxable distribution payable in stock or stock rights, or a distribution that is treated as a distribution in part or full payment in exchange for stock. If part of the distribution is taxable, withholding is required on the entire distribution.

The withholding tax on dividends applies to a cash distribution made by a domestic corporation in the ordinary course of its business with respect to its stock to foreign shareholders. Withholding is required even though it may be subsequently determined that part or all of the distribution should be treated as return of capital or as gain from the sale or exchange of property.

A claim for refund, with appropriate supporting evidence, in either case may be filed for the excess payment.

Capital gain dividends paid by a regulated investment company or real estate investment trust are not subject to withholding.

Dividends paid to a shareholder whose status is not definite. If the shareholder's address is within the United States, it may be assumed the shareholder is a citizen or resident of the United States or a domestic partnership or corporation and no withholding is required. Unless the facts and circumstances indicate clearly that the shareholder is a nonresident alien, foreign partnership, or foreign corporation, an address in care of another person in the United States does not of itself warrant treating the shareholder as a nonresident alien, foreign partnership, or foreign corporation.

However, when there is no definite knowledge of the status of a shareholder, the tax must be withheld if the shareholder's address is outside the United States. If a shareholder changes from an address outside the United States to an address within the United States, the tax must be withheld unless proof is furnished showing that the individual is a citizen or resident of the United States. (Proof of residence or of U.S. citizenship may be satisfied by furnishing a statement or filing Form 1078, as previously discussed under *Withholding Exemptions and Reductions.)*

Withholding of tax on dividends to foreign shareholders must be made at rates in effect on the date the dividend check is first issued even if the check is delivered when a new rate is in effect.

Dividends paid by a domestic corporation which has less than 20% of its gross income from sources within the United States for the 3-year period (or shorter period if the corporation was not in existence for 3 years) ending with the close of its tax year preceding the declaration of the dividend are not subject to withholding.

Dividends paid by a domestic corporation that generally conducts its principal business activities in a possession and that has elected the Puerto Rico and possession tax credit are not subject to withholding.

The dividend and interest exclusion of up to $200 for individuals or the dividends received deduction for corporations do not reduce the amount of withholding. Withholding is figured on the total amount of the dividend payment.

If stock is owned jointly by a nonresident alien individual and the U.S. citizen spouse of such individual, tax must be withheld only on the amount of the dividends paid to the nonresident alien individual.

Dividends paid by U.S. subsidiary to foreign parent corporation (Income Code 7). Under certain tax treaties, dividends from a U.S. subsidiary corporation to a foreign parent corporation are accorded reduced withholding rates. Accordingly, these dividends are assigned a separate category for purposes of correctly applying the withholding rules.

Under some treaties, the reduction in rate applies only if the parent foreign corporation is subject to tax on the dividends in the foreign country or only if the subsidiary corporation has dividend and interest income which does not exceed a certain percentage of its total income. The percentage stock ownership required in a subsidiary corporation to qualify its dividends also may vary from treaty to treaty.

Dividends paid by foreign corporation (Income Code 8). Dividends paid by a foreign corporation with 50% or more of its gross in-

come from all sources effectively connected with the conduct of a trade or business in the United States for the 3-year period (or shorter period) ending with the close of its tax year preceding the payment of the dividends are, unless completely exempted from withholding under a treaty, subject to withholding in the same ratio as the gross income effectively connected bears to the gross income from all sources of the foreign corporation. If less than 50% of its gross income is effectively connected for such 3-year (or shorter) period, then the dividends are not subject to withholding.

Statutory. In the absence of an applicable treaty provision, withholding at the statutory rate of 30% is required on the dividends from foreign corporations that are attributable to the gross income effectively connected with the conduct of a trade or business in the United States.

Tax Treaties. There are different treaty provisions applicable to dividends paid by foreign corporations. These provisions may exempt all or a part of the dividends paid by the foreign corporations. Some treaties provide for an exemption regardless of the payee's residence or citizenship; others provide for an exemption according to the payee's status as a resident or citizen of the payer's country. The specific treaty provision applicable to the payer's country should be checked. *Table 1* at the end of this publication provides a list of the Internal Revenue Cumulative Bulletins containing the tax treaties.

Certain Gains

Capital gains (Income Code 9). Generally, income derived from the sale in the United States of real or personal property is not fixed or determinable annual or periodic income and, thus, is not subject to withholding. However, withholding at 30% is required on the gross amount of the following items:

1) Gains on lump-sum distributions from exempt employee's pension, profit-sharing, or stock bonus trusts,
2) Gains on lump-sum payments under certain qualified employee annuity plans,
3) Gains on disposal of timber, coal, or domestic iron ore with a retained economic interest unless an election is made to treat such gains as income effectively connected with the conduct of a trade or business in the United States,
4) Gains on contingent payments received from the sale or exchange of patents, copyrights, and similar property after October 4, 1966,
5) Gains on certain transfers of all substantial rights to, or an undivided interest in, patents if the transfers were made on or before October 4, 1966, and
6) Gains or income from original issue discount. The 30% withholding is required for gains realized on disposition of obligations issued after September 28, 1965, and before April 1, 1972, and held for more than 12 months, or issued after March 31, 1972, and payable more than 6 months from date of original issue (regardless of the period held by the taxpayer) but only to the extent of the amount treated as original issue discount.

If the withholding agent does not know the amount of the gain, the agent must withhold an amount necessary to assure that the tax withheld will not be less than 30% of the recognized gain. (The 60% deduction ordinarily allowed for long-term capital gain is not taken into consideration.) The amount to be withheld, however, must not exceed 30% of the amount payable by reason of the transaction.

Unless reason to believe the contrary exists, the withholding agent may rely upon the written statement of the person entitled to the income as to the amount of the gain. The statement, prepared according to regulations, must show the computation of the gain and must be furnished to the withholding agent in duplicate. The withholding agent must forward the duplicate copy of the statement along with Form 1042S and Form 1042 to the Director, Internal Revenue Service Center, Philadelphia, PA 19255, on or before March 15 of the succeeding year.

Royalties

In general, withholding is required on the payment of royalties from sources within the United States. However, certain types of royalties are accorded reduced rates or exemptions under some tax treaties. Accordingly, these different types of royalties are assigned to separate categories for withholding purposes.

Industrial royalties (Income Code 10). This category of income includes royalties for the use of, or for the privilege of using, patents, trademarks, secret processes and formulas, goodwill, franchises, "know-how", and similar rights. It also may include rents for the use or lease of personal property. (This category excludes royalties described under Income Codes 11, 12, and 13.)

Motion picture or television copyright royalties (Income Code 11). This category refers to rentals paid for the use of motion picture and television copyrights.

Other royalties (e.g. copyright, recording, publishing, etc.) (Income Code 12). This category refers to the royalties paid for the use of copyrights on books, periodicals, articles, etc. (excluding motion picture and television copyrights).

Real Property Income

Real property income and natural resources royalties (Income Code 13). Income from real property located in the United States and held for the production of income, or from an interest in such real property, is subject to withholding provided the foreign payee does not elect to treat such real property income as income effectively connected with the conduct of a trade or business in the United States. If the foreign payee elects to have such income treated as effectively connected, the payee must file Form 4224. This real property income includes royalties from mines, wells, or other natural deposits, as well as ordinary rents for the use of real property.

Pensions and Annuities

Pensions or annuities (Income Code 14). Generally, payments of pensions and annuities are subject to withholding on the gross amount of such payments. However, under the provisions of most tax treaties, private pensions and annuities are exempt from withholding.

In any case, the payer of an annuity is not required to withhold tax on an annuity payment to a nonresident alien if at the time of the first payment, 90% or more of the employees eligible for benefits under the plan are citizens or residents of the United States and the payment is:

1) Attributable to the nonresident's personal services performed outside the United States, or
2) Attributable to personal services for—
   a) A nonresident alien individual, foreign partnership, or foreign corporation not engaged in a trade or business in the United States, or
   b) An office or place of business of a U.S. resident or citizen which is maintained outside the United States.

Compensation for Personal Services Performed

Withholding at the 30% rate generally is required if compensation is paid to a nonresident alien individual for labor or personal services performed in the United States, unless that compensation is specifically exempted from withholding (discussed previously) or subject to graduated withholding (discussed later). This rule applies regardless of the residence of the payer, the place in which the contract for service was made, and the place of payment.

One personal exemption is allowed a nonresident alien individual who is ***not*** a resident of Canada or Mexico, and is not a national of the United States, when determining the amount of remuneration for labor or personal services performed in the United States to which the 30% rate is to be applied. For this purpose, the exemption is prorated on a daily basis of $2.74 a day for the period labor or personal services are performed within the United States. If an alien individual is a resident of Canada or Mexico, or a national of the United States, the individual is allowed the same personal exemptions as a U.S. citizen and is entitled to a proration of $2.74 per day for each allowable exemption.

Example 1. Hans Schmidt, who is a resident of a country other than Canada or Mexico and who is not a national of the United States, worked (not as an employee) in the United States for 100 days during the tax

year before returning to his country. He earned $6,000 for the services performed (not considered wages) in the United States. Hans is married and has three dependent children. His wife was not employed and had no income subject to U.S. tax. Hans is allowed as a deduction against the remuneration for his personal services performed in the United States $274 (100 days × $2.74). Withholding at 30% is applied against the balance. Thus, a tax of $1,717.80 was withheld from Hans' earnings (30% of $5,726).

Example 2. If, in Example 1, Hans were a resident of Canada or Mexico or a national of the United States, working under contract with a domestic corporation, $1,370 (100 days × $2.74 per day for each of five exemptions) would be allowed against the remuneration for personal services performed within the United States, and withholding at 30% would be applied against $4,630 ($6,000 − $1,370), the balance of the remuneration. Thus, a tax of $1,389 would have been withheld from Hans' earnings (30% of $4,630).

Remuneration constituting wages. The 30% withholding rule does ***not*** apply to salaries, wages, or any other compensation (referred to collectively as wages) for personal services of a nonresident alien if the wages are subject to the regular graduated withholding applicable to U.S. citizens and residents. Thus, any remuneration paid to a nonresident alien individual as wages for personal services performed as an ***employee for an employer*** is exempted from the 30% withholding rule. In addition, if remuneration paid to a nonresident alien individual for personal services performed as an employee for an employer were treated as wages subject to graduated withholding except for the fact that it is specifically excepted from wages, it is similarly exempted from the 30% withholding rule.

Withholding exemptions. The withholding exemptions allowed on any one day to a nonresident alien employee whose wages are subject to regular graduated withholding are equal to the number of ***personal exemptions*** to which the employee is entitled under the usual rules for nonresident alien individuals. Thus, a nonresident alien individual is allowed only one withholding exemption if that individual is not a resident of Puerto Rico (claiming a dependency exemption for a Puerto Rican resident who is also a U.S. citizen), during the entire tax year, is not a resident of Canada or Mexico, or is not a national of the United States.

Employer-employee relationship. Since most remuneration paid to nonresident alien individuals for personal services performed in the United States constitutes wages, this publication discusses the usual rules for determining an employer-employee relationship.

Under the common law rules, every individual who performs services subject to the will and control of any employer, ***both*** as to what shall be done and how it shall be done, is an employee. It does not matter that the employer permits the employee considerable discretion and freedom of action, as long as the employer has the ***legal right*** to control both the method and the result of the services.

If the relationship of employer and employee exists, the description of the relationship by the parties as anything other than that is immaterial. Thus, it is of no consequence that the employee is designated as a partner, coadventurer, agent, or independent contractor. It does not matter how the pay is measured, how the individual is paid, or what the payments are called. Nor does it matter whether the individual is employed full or part time.

The existence of the employer-employee relationship under the usual common law rules will be determined, in doubtful cases, upon an examination of the particular facts of each case.

An employee generally includes any individual who performs services if the relationship between the individual and the person for whom the services are performed is the ***legal*** relationship of employer and employee.

The term employee includes elected or appointed officials and employees of the United States, a state, territory, Puerto Rico, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any of the foregoing.

No distinction is made between classes of employees. Superintendents, managers, and other supervisory personnel are employees. Generally, an officer of a corporation is an employee, but a director acting in this capacity is not. However, an officer who does not perform any services, or who performs only minor services, and neither receives nor is entitled to receive any compensation is not considered an employee.

An employer is any person or organization for whom an individual performs or has performed any service, of whatever nature, as an employee.

The term employer includes not only individuals and organizations engaged in trade or business, but organizations exempt from income tax, such as religious and charitable organizations, educational institutions, clubs, social organizations, and societies. It also includes the governments of the United States, the states, territories, Puerto Rico, and the District of Columbia, as well as their agencies, instrumentalities, and political subdivisions.

Two special definitions of employer, designed solely to meet unusual situations that may have considerable application to nonresident alien individuals are:

1) An employer includes any person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation not engaged in trade or business within the United States (including Puerto Rico as if a part of the United States), and
2) An employer includes any person who has control of the payment of wages for services that are performed for another person who does not have that control.

For example, if a trust pays wages, such as certain types of pensions or retired pay, and the person for whom the services were performed has no legal control over the payment of the wages, the trust is the employer.

It should be understood that these special definitions have no effect whatsoever upon the relationship between an alien employee and the actual employer when determining whether the remuneration received is considered to be wages.

If an employer-employee relationship exists, the employer ordinarily must withhold the income tax from wage payments by using the percentage method or wage-bracket tables as shown in the *Employer's Tax Guide,* Circular E. The employer must report the amount of remuneration paid and pay the withheld income and/or social security taxes by filing a quarterly return on Form 941. The employer also may be subject to the depositary requirements prescribed for these taxes.

Remuneration excepted from wages. Examples of employment, the remuneration from which is specificially excepted from wages (for the graduated income tax withholding requirement), include, but are not limited to, the following:

1) Agricultural labor performed by any worker from any foreign country or possession thereof lawfully admitted to the United States on a temporary basis to perform such labor,
2) Services of a household nature performed in or about the private home of an employer, or in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority (but not an alumni club or chapter) not operated primarily as a business enterprise (examples of these services include those performed as a cook, janitor, housekeeper, governess, gardener, handyman, chauffeur of auto for family use, or housemother),
3) Certain services performed ***outside*** the course of the employer's trade or business for which cash remuneration is less than $50 for the calendar quarter,
4) Services performed as an employee of a foreign government (including those performed by ambassadors, ministers, other diplomatic officers and employees, consular and other officers and employees, and nondiplomatic representatives, but not including those performed for a U.S. or Puerto Rican Corporation owned by a foreign government) without regard to citizenship, residence, or where services are performed,
5) Services performed within or outside the United States by an employee or officer (regardless of citizenship or residence) of an organization designated as an international organization under the International Organizations Immunities Act,
6) Services performed by a duly ordained, commissioned, or licensed minister of a church, but only if performed in the exercise of the ministry and not as an em-

ployee of the United States or of a foreign government or political subdivision thereof, or services performed by a member of a religious order in the exercise of duties required by that order,

7) Tips paid to an employee if they are paid in any medium other than cash or, if in cash they amount to less than $20 in any calendar month in the course of employment, and

8) Work performed on American aircraft or vessels outside the United States.

Services performed outside the United States. Remuneration paid to a nonresident alien individual (other than residents of Puerto Rico, discussed later) for services performed outside the United States is excepted from wages and hence is not subject to regular graduated withholding.

Scholarship or fellowship grant(Income Code 15). A nonresident alien individual who is temporarily present in the United States may receive a tax-exempt scholarship or fellowship, subject to certain limitations.

If an individual, who is a candidate for a degree, receives an amount that qualifies as a scholarship or fellowship grant for income tax purposes, no withholding is required. However, withholding is required on any payments received for teaching, research, or other part-time employment required as a condition to receiving the grant, unless those services are required of all candidates for a particular degree (who may or may not be recipients of scholarship or fellowship grants).

If an individual, who is not a candidate for a degree and who is present in the United States under section 101(a)(15)(F) or (J) of the Immigration and Nationality Act, receives an amount that qualifies as a scholarship or fellowship grant for income tax purposes, withholding at the rate of 14% is required on the amount of the grant that exceeds $300 per month. In addition, after a total of 36 months (consecutive or not), the entire grant received is subject to withholding at the 14% rate.

Before applying the 14% withholding rate to the amount of the grant that is subject to withholding, the alien is allowed the benefit of a deduction for one personal exemption, which is prorated on a daily basis of $2.74 during the period in which the payments are received. If the nonresident alien is a resident of Canada or Mexico, or a national of the United States, the alien is entitled to the same personal exemptions as U.S. citizens and is entitled to a proration of $2.74 per day for each allowable exemption.

Example 1. John Hendrix, a married nonresident alien whose wife had no gross income subject to U.S. tax and who is a resident of Germany, was admitted to the United States on April 1, 1980, under paragraph (J) of section 101(a)(15) of the Immigration and Nationality Act to engage in postdoctoral scientific studies. He received a fellowship grant of $275 per month starting on April 1. No withholding is required for 1980 since the monthly grant is less than $300 and the number of months he received the grant in 1980 did not exceed the 36-month limit.

Example 2. If, in Example 1, John Hendrix had received a fellowship grant of $350 per month, again no withholding would be required on the excess $450 ($350 minus $300 × 9 months = $450) since the prorated deduction for one exemption totaling $753.50 ($2.74 × 275 days = $753.50) exceeds the taxable portion of the grant ($450) and as a result there is no balance upon which the 14% is to be applied.

Example 3. If, in Example 1, John Hendrix had received $450 per month, he would be subject to withholding on the remaining taxable portion of the grant, $1,350 ($450 minus $300 × 9 months = $1,350). There is a balance of $596.50 upon which the 14% is applied after applying the prorated deduction for one exemption of $753.50. The total tax to be withheld for the entire year is $83.51 ($596.50 × 14% = $83.51). To insure that adequate funds are on hand to cover the deposit required by the depository rules or the total withholding payment to be made by the following March 15 to the Internal Revenue Service, when filing Form 1042, it is desirable for the withholding agent to withhold an equal portion of the liability before remitting the monthly grant to the recipient. If this is not done, the $83.51 will have to be withheld from one or more payments, and may create a hardship for the recipient.

Example 4. If in Example 3, John Hendrix were a resident of Canada or Mexico, or a national of the United States, he would not be subject to withholding, since the prorated deduction for two exemptions totaling $1,507 ($5.48 × 275 days = $1,507) exceeds the taxable portion of the grant ($1,350) and there is no balance upon which the 14% is to be applied.

Amounts related to a scholarship or fellowship grant, received by an alien present in the United States under section 101(a)(15)(F) or (J) of the Immigration and Nationality Act for travel, research, clerical help, or equipment may be subject to withholding. Such amounts are subject to withholding at the rate of 14% after allowing for the proration of the allowable deduction for exemptions according to the foregoing rules if they are subject to tax because:

1) They pertain to the portion of the scholarship or fellowship grant that is subject to tax, or

2) They were not specifically designated to cover these expenses.

However, if the additional amounts are designated specifically to cover expenses for travel, research, clerical help, or equipment pertaining to the scholarship or fellowship, and are so expended, no withholding is required until a 36-month period (as previously explained) has expired. After the 36-month period has expired, these additional amounts are included with the scholarship or fellowship grant, and the amount of tax to be withheld is computed according to the foregoing rules.

Remuneration for services rendered as an employee by an alien who also is the recipient of a scholarship or fellowship grant ordinarily will be subject to regular graduated withholding according to the rules previously discussed in *Remuneration constituting wages.* This includes taxable amounts an individual who is a candidate for a degree receives for teaching, doing research, and performing other part-time employment required as a condition to receiving the scholarship or fellowship grant.

Thus, the employer should withhold the income tax from the remuneration paid by using the percentage method or wage-bracket tables (as the employer would for U.S. citizens and residents). If the alien is present in the United States on an "F" or "J" visa, however, the employer does not withhold social security tax if the employee is performing services to carry out a purpose for which the individual was admitted to the United States.

Amounts of per diem for subsistence paid by the U.S. Government (directly or by contract) to any nonresident alien individual engaged in any training program in the United States under the Mutual Security Act of 1954 are not subject to the 30% withholding. This is true even though the alien may be subject to income tax on those amounts.

Compensation for independent personal services (Income Code 16). Independent personal services (a term commonly used in tax treaties) means personal services performed by an independent nonresident alien contractor as contrasted with those performed by an employee. This category of compensation includes payments for professional services, such as fees of an attorney, physician, or accountant made directly to the person performing the services. This category also includes payments made for performances by public entertainers such as artists, actors, musicians, or athletes.

Compensation for independent personal services is subject to withholding and reporting as follows.

Statutory. Withholding at the statutory rate of 30% is required on all payments. Before applying the 30% rate, you should apply the prorated value of one personal exemption (or for residents of Canada or Mexico or U.S. nationals, the same number of exemptions as a U.S. citizen) against such payments. However, the nonresident alien individual may be entitled to a refund of the withheld tax, upon filing a U.S. tax return, as described later under Income Code 17.

Tax treaties. Under most of the tax treaties, compensation for independent personal services performed within the United States is exempt from the U.S. income tax only when such services are performed during a period of temporary presence in the United States (usually not more than 183 days) and the independent contractor is a resident of the treaty country. Thus, the exemption from U.S.

tax does not apply if the contractor is a U.S. resident. Often, withholding at the statutory rate of 30% applies when a payment is made to a treaty country resident contractor for services performed by the contractor as a nonresident alien individual in the United States. See *Special events and promotions,* earlier under *Treaty Benefits.* The treaty country resident contractor must then file a U.S. tax return to recover any overwithheld tax and to provide the Service with proof that the contractor is entitled to the benefits of an exemption under the treaty.

Compensation for dependent personal services (Income Code 17). Dependent personal services means payments for personal services performed in the United States by a nonresident alien individual as an employee (as contrasted with an independent contractor).

Compensation for dependent personal services is subject to withholding and reporting as follows.

Statutory. Ordinarily, regular graduated withholding is required on compensation (wages) for dependent personal services. Form W-4, *Employee's Withholding Allowance Certificate,* is required from a nonresident alien individual, and reporting of wages and income tax withheld is required on Form W-2. The nonresident alien employee, however, may be entitled to a refund of the withheld tax, upon the filing of a U.S. tax return, under the following circumstances.

First, compensation paid for labor or personal services performed in the United States is ***deemed not to be income from sources within the United States*** and thus, is not subject to U.S. income tax if:

1) The labor or services are performed by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the tax year, and
2) The compensation does not exceed $3,000 in the aggregate, and
3) The compensation is for labor or services performed as an employee of, or under a contract with—
   a) A nonresident alien individual, foreign partnership, or foreign corporation that is not engaged in trade or business within the United States, or
   b) An individual, who is a citizen or resident of the United States, a domestic partnership, or a domestic corporation if the labor or services are performed for an office or place of business maintained in a foreign country or in a possession of the United States by such individual, partnership, or corporation.

If compensation exceeds $3,000, the entire amount is income from sources within the United States and subject to U.S. tax.

Second, compensation paid by a ***foreign employer*** to a nonresident alien individual for the period the alien is temporarily present in the United States as a nonimmigrant under section 101(a)(15)(F) or (J) of the Immigration and Nationality Act is exempt from U.S. income tax. For this purpose, a foreign employer means:

1) A nonresident alien individual, foreign partnership, or foreign corporation, or
2) An office or place of business maintained in a foreign country or in a U.S. possession by a domestic corporation, a domestic partnership, or an individual U.S. citizen or resident.

For example, a French citizen employed in the Paris branch of a banking company incorporated in the State of New York was admitted to the United States for a temporary period under section 101(a)(15)(J) of the Immigration and Nationality Act to study monetary theory. The alien continued to receive a salary from the foreign branch while studying in the United States. The salary would not be subject to regular wage withholding if the proper statement claiming the exemption was filed.

Third, remuneration paid to a nonresident alien individual who is a resident of Canada or Mexico and who, in the performance of duties in a ***transportation service*** between points in the United States and those countries, enters and leaves the United States at frequent intervals, is excepted from wages for income tax withholding purposes. Therefore, the remuneration is not subject to regular graduated withholding, and also is specifically exempt from 30% withholding. This applies to personnel engaged in railroad, bus, truck, ferry, steamboat, aircraft, or other transportation services and applies whether the employer is a domestic or foreign entity.

Remuneration paid to a nonresident alien individual who is a resident of Canada or Mexico and who enters and leaves the United States at frequent intervals in the performance of duties in connection with an ***international project,*** such as the construction, maintenance, or operation of a waterway, viaduct, dam, or bridge traversed by, or traversing, the boundary between the United States and either Canada or Mexico similarly is not subject to regular graduated withholding, nor to 30% withholding.

For either of these exceptions to apply for any tax year, the alien employee must furnish the employer a statement in duplicate for the tax year setting forth the employee's name, address, and taxpayer identifying number. The statement must certify that the individual is not a citizen or resident of the United States and is a resident of Canada or Mexico who expects to meet these requirements during the tax year for which the statement is filed. Although no particular form is prescribed, this statement must show:

1) The date,
2) The tax year covered, and
3) The employee's signature.

The statement must contain, or be verified by, a written declaration that it is made under the penalties of perjury.

Canadian and Mexican residents employed wholly within the United States. Neither the transportation service exception nor the International projects exception applies to the remuneration of a resident of Canada or Mexico who is employed wholly within the United States and who commutes from a home in Canada or Mexico in the pursuit of employment within the United States. Thus, if such an individual is employed to perform services at a fixed point or points in the United States (such as a factory, store, office, or designated area or areas), the wages for services performed as an employee for an employer are subject to regular graduated withholding.

Fourth, remuneration paid for services ***performed in Puerto Rico*** by a nonresident alien individual for an employer (other than the United States or one of its agencies) is excepted from wages for income tax withholding purposes and, thus, is not subject to regular withholding.

Remuneration paid for either:

1) Services performed outside the United States but ***not*** in Puerto Rico, by a resident of Puerto Rico for an employer (except the United States or one of its agencies), or
2) Services performed outside the United States by a nonresident alien individual who is a resident of Puerto Rico as an employee of the United States or any of its agencies

is excepted from wages for income tax withholding purposes and thus is not subject to regular wage withholding if the individual does not expect to be a resident of Puerto Rico during the entire tax year.

To qualify for any tax year, the employee must furnish the employer a statement showing the employee's name and address and certifying that the employee is not a citizen or resident of the United States, and is a resident of Puerto Rico who does not expect to be a resident for the entire tax year. Although no particular form is prescribed, this statement must show:

1) The date,
2) The tax year covered, and
3) The employee's signature.

This statement must contain, or be verified by, a written declaration that it is made under the penalties of perjury.

Tax treaties. Compensation for dependent personal services under most tax treaties is exempt from U.S. income tax ***only*** if the employer is a treaty country resident and the nonresident alien individual performs the services while temporarily residing in the United States (usually for not more than 183 days).

Compensation for teaching (Income Code 18). This category is assigned a separate income code number because most tax treaties provide at least partial exemption from withholding and U.S. tax. Compensation for teaching means payments to a nonresident alien professor, teacher, or researcher by a

U.S. university or other accredited educational institution for teaching or research work at the educational institution.

Statutory. Graduated withholding of income tax usually applies to all wages, salaries, and other compensation for teaching and research paid by a U.S. educational institution during the period the nonresident alien individual is teaching or performing research at such institution. If a nonimmigrant alien individual is temporarily present in the United States on an (F) or (J) visa, no FICA or FUTA tax should be withheld if the alien is performing services to carry out a purpose for which the alien was admitted to the United States.

Tax treaties. Under most tax treaties, compensation for teaching is exempt from U.S. tax and, therefore, from withholding, for a specified period of time when paid to a professor, teacher, or researcher who is a resident of the treaty country (see *Table 3*). The U.S. educational institution paying such compensation is required to report the amount of compensation paid each year on Form 1042S.

Compensation during training (Income Code 19). This category refers to compensation (as contrasted with remittances, allowances, or other forms of scholarship or fellowship compensation—see Income Code 15) for personal services performed while a nonresident alien individual is temporarily in the United States as a student, trainee, or apprentice, or while acquiring technical, professional, or business experience.

Statutory. Wages, salaries, or other compensation paid to a nonresident alien student, trainee, or apprentice for labor or personal services performed in the United States are subject to graduated withholding. If a nonimmigrant alien student or trainee is present temporarily in the United States on an (F) or (J) visa and is performing services to carry out a purpose for which admitted to the United States no FICA or FUTA tax should be withheld.

Tax treaties. Many tax treaties provide an exemption from U.S. tax and, therefore, from graduated withholding, on compensation paid to nonresident alien students or trainees during training for a limited period, up to a maximum dollar amount per annum. In addition, some treaties provide an exemption from tax and withholding for compensation paid by the U.S. Government or its contractor to a nonresident alien student or trainee who is temporarily present in the United States as a participant in a program sponsored by the U.S. Government (see *Table 3*). However, reporting the amount of compensation is required on Form 1042S by a U.S. resident, an agency of the U.S. Government, or its contractor.

Other Income

Other income (e.g. alimony, insurance premium)(Income Code 20). As indicated previously, every kind of fixed or determinable annual or periodic income from sources within the United States is subject to withholding, unless specifically exempt under the Internal Revenue Code or a tax treaty. The following types of income illustrate other income subject to withholding, but not included in any of the other 19 income categories. The 30% statutory withholding rate generally applies to these kinds of income, and hence, they are not shown in *Table 2* (except by footnote in certain cases) as being subject to a reduced rate or exemption under any existing tax convention.

Alimony payments. Periodic alimony payments made by U.S. citizens and residents to nonresident aliens are taxable and subject to withholding whether the recipients are residing abroad or temporarily present in the United States.

Periodic alimony payments made to a nonresident alien individual by a U.S. ancillary administrator of a nonresident alien are not from sources within the United States and are not subject to withholding.

Insurance proceeds. Income derived by an insured nonresident alien individual from sources within the United States upon the surrender of, or at the maturity of, a life insurance policy, is subject to withholding. The proceeds constitute income to the extent they exceed the cost of the policy.

Miscellaneous payments. If a payment of income (other than previously shown) is from sources within the United States, is fixed or determinable annual or periodic income, and is ***not*** effectively connected with the conduct of a trade or business within the United States, such income is subject to withholding on the gross amount of the payment. (See previous discussions for definitions of terms—fixed or determinable income and effectively connected with a trade or business in the United States.) The fact that a payment is not made annually or periodically does not necessarily prevent its being fixed or determinable annual or periodic income.

For example, a person working for a commission that is paid or credited monthly receives fixed or determinable annual or periodic income. A commission paid for a single transaction is also fixed or determinable annual or periodic income.

The share of the fixed or determinable annual or periodic income of an estate or trust from sources within the United States, which is required to be distributed currently or has been paid or credited during the tax year, to a nonresident alien beneficiary of the estate or trust constitutes fixed or determinable annual or periodic income.

Such items as taxes, interest on mortgages, or premiums on insurance paid to or for the account of a nonresident alien landlord by a tenant, under terms of a lease, are fixed or determinable annual or periodic income.

Further examples of income subject to withholding are prizes to nonresident alien artists for pictures exhibited in the United States, or winnings from racetrack wagers, purses received by nonresident alien pugilists for prize fights in the United States, and prizes received by nonresident alien professional golfers in golfing tournaments in the United States.

Withholding is not required on winner's purses received by a nonresident alien owner and operator of a stable of racing horses, from races held in the United States, provided Form 4224 or an equivalent statement is filed with the withholding agent.

Withholding Tax Rates

A withholding agent is required to deduct and withhold tax at the following statutory rates specified in the Internal Revenue Code on payments of income unless a reduced rate or exemption is authorized under a tax treaty:

1) 14% on certain compensation in the form of a scholarship or fellowship grant,
2) 2% on tax-free covenant bond interest on bonds issued before January 1, 1934, whose maturity date was not extended on or after that date, unless paragraph (3) applies to such interest,
3) 30% on tax-free covenant bond interest on bonds issued before January 1, 1934, whose maturity date was not extended on or after that date if the payments are made to a nonresident alien individual, nonresident partnership composed wholly or partly of nonresident aliens, a nonresident foreign corporation, or an owner who is unknown to the withholding agent and the tax liability assumed by the obligor does not exceed 2% of the interest,
4) 27½% on tax-free covenant bond interest on bonds issued before January 1, 1934, whose maturity date was extended on or after that date and the tax liability assumed by the obligor exceeds 27½% of the interest,
5) 4% on gross investment income from interest, dividends, rents, and royalties paid to a private foreign foundation,
6) Graduated rates as specified in Circular E on wages paid to a nonresident alien employee, and
7) 30% on all other income payments described previously under *Income Subject to Withholding*.

However, increased tax rates may be proclaimed by the President if foreign countries apply burdensome or discriminatory taxes on U.S. persons.

Deposits of Withheld Taxes

Every withholding agent must deposit the income tax withheld with an authorized financial institution or a Federal Reserve Bank, with a Federal Tax Deposit Form 512 in accordance with instructions on the reverse of that form. A deposit required for any period occurring in one calendar year must be made separately from

1) Any deposit for any period occurring in another calendar year, or

2) A deposit required for any other type of tax, for example, withheld tax on wages and FICA taxes, excise taxes, etc.

The amount of taxes withheld determines the frequency of the deposits. The following rules show how often deposits must be made.

1) If at the end of a calendar year the total amount of undeposited taxes is less than $200, the entire amount may either be deposited or be remitted with Form 1042 on or before the filing due date of your annual Form 1042.

2) If at the end of any month the cumulative amount of undeposited taxes is $200 or more and less than $2,000, the taxes must be deposited within 15 days after the end of the month. (This does not apply if a deposit was made for a quarter-monthly period that occurred during the month under the $2,000 rule in (3).)

3) If at the end of any quarter-monthly period the cumulative amount of undeposited taxes is $2,000 or more, the taxes must be deposited within 3 banking days after the end of the quarter-monthly period. (A quarter-monthly period ends on the 7th, 15th, 22nd, and last day of the month.) In determining banking days, exclude any local holidays observed by authorized financial institutions, as well as Saturdays, Sundays, and legal holidays.

The deposit requirements in (3) are considered met if:

1) At least 90% of the actual tax liability is deposited for the deposit period, and

2) If the quarter-monthly period occurs in a month other than the month of December, any underpayment is deposited with the first deposit that is required to be made after the 15th day of the following month. Any underpayment for a quarter-monthly period that occurs during December that is $200 or more must be deposited on or before January 31.

These deposit rules do not apply to Canadian withholding agents, who should remit any additional U.S. tax withheld with their annual Form 1042 return.

How to deposit taxes. Fill in a preinscribed Federal Tax Deposit Form 512 in accordance with the form instructions. Mail or deliver the completed form with a check or postal money order for the amount of the deposit to an authorized financial institution qualified as a depository for federal taxes, or to the Federal Tax Department of the Federal Reserve Bank or Branch serving the geographic area from which the deposit is mailed or delivered. Make the check or money order payable to the financial institution or Federal Reserve Bank where you make your deposit.

Deposits at authorized financial institutions. Authorized financial institution depositories are required to accept cash, a postal money order drawn to the order of the depository, or a check or draft drawn on and made payable to the depository. You may make a deposit with a check drawn on another financial institution only if the depository is willing to accept that form of payment.

Deposits at Federal Reserve Banks. If you make a tax deposit at a Federal Reserve Bank, you must make the deposit at the Federal Reserve Bank that serves your geographical area. Also, the payment must be made with what the Federal Reserve Bank considers an immediate credit item. This includes, but is not limited to cash, a postal money order, or a check drawn on a bank in the same city as the Federal Reserve Bank. Additional information on which Federal Reserve Bank serves your area, and what it considers an immediate credit item can be obtained from your local financial institution or Federal Reserve Bank.

Timeliness of Deposits. The timeliness of deposits is determined by the date received by the financial institution or Federal Reserve Bank. If a deposit is made by mail, and it is received after the due date, it will be considered timely if you establish that it was mailed on or before the second day before the due date. However, tax deposits made at Federal Reserve Banks that are not in compliance with deposit payment requirements will nevertheless be processed by the receiving Federal Reserve Bank rather than returned to you. Such tax deposits will be dated upon collection of the funds by the Federal Reserve Bank.

Penalty for failure to make timely deposits. If the withholding agent fails to make a required deposit within the time prescribed, a 5% penalty is imposed on the underpayment (the difference between the required deposit and any actual deposit for a period). The penalty can be avoided if the withholding agent can show to the satisfaction of the District Director or Director of the Service Center that the failure to deposit was for reasonable cause and not because of willful neglect.

Saturdays, Sundays, or holidays. If the due date for performing any act for tax purposes, such as making a deposit or filing a return, falls on a Saturday, Sunday, or legal holiday, you may perform the act on the next succeeding day that is not a Saturday, Sunday, or holiday.

Obtaining federal tax deposit forms. Preinscribed federal tax deposit forms automatically will be sent to you after you apply for an identification number. Apply by writing to the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255. If you need additional forms, order them from the Internal Revenue Service Center in Philadelphia.

If you have not received federal tax deposit forms by the due date of a deposit, mail your payment to the Internal Revenue Service Center in Philadelphia. Make it payable to the Internal Revenue Service and show on it your name, identification number, address, kind of tax, and period covered.

Record of deposit. Before making a deposit, enter the amount of payment on the form and in your records. The deposit form will not be returned to you, but will be used to credit your tax account as identified by your employer identification number.

Refund of Overpayment of Tax

Nonresident alien employees must file a timely return, Form 1040NR, to obtain a refund of tax withheld under regular graduated withholding from wages paid for services performed within the United States. That tax cannot be refunded by the employer.

Adjustment for Overwithholding

Generally, in order to recover a refund or credit of tax withheld at the source, which has been paid to the U.S. Government, the actual owner of such income must file a timely income tax return, Form 1040NR.

For example, when a withholding agent who is required to withhold $300 tax from rents paid to a nonresident alien individual mistakenly withholds $320 and mistakenly pays $350 to the Internal Revenue Service, the amount of $30 shall be credited or refunded to the withholding agent and the amount of $20 shall be credited or refunded to the actual owner of such income.

The withholding agent may wish to recover this overpayment of $30 by adjusting the Federal Tax Deposits if the erroneous withholding occurred during the current taxable year. However, the credit of $30 may be claimed as a credit on the Form 1042, which would be filed after the end of the calendar year. This procedure would create an overpaid return that would be processed as a refund or credit return.

If the withholding agent reimburses the recipient $20 during the current year (before filing the Form 1042), the withholding agent would file Form 1042 after the end of the calendar year showing this reimbursement on the recipient's Form 1042S, and on the applicable line showing a refund of $50 on Form 1042.

Overwithholding during a calendar year. The present system requires a deposit of 90% of the tax withheld within a relatively short time after the withholding occurs if the tax withheld amounts to $2,000 or more. The 10% remainder retained by the withholding agent may be used for making any necessary adjustments between the withholding agent and the recipient. However, in the event that the 10% amount is not sufficient or adjustments are necessary after the entire tax (including the 10% previous balance retained) has been deposited, the Service has set up two procedures, one termed ***repayment*** and the other ***reimbursement.***

A repayment is a refunding of the overwithholding (after its deposit) out of the withholding agent's own funds, and a reimbursement is a credit of the excess tax previously withheld from a recipient of income against the tax to be withheld from income subsequently paid to the same recipient. The essential difference between the two methods of adjust-

ment, repayment and reimbursement, is that reimbursement involves only an adjustment between income payments to the same recipient. It does not have to be reflected on Form 1042. There can be no reduction of a deposit of tax made after filing Form 1042 for the year in which the overwithholding occurred. However, repayment, which involves the use of the withholding agent's own funds, and a subsequent reduction in a tax deposit, must be reflected on Form 1042.

Under the regulations, a withholding agent may adjust amounts overwithheld by repayment out of the agent's own funds any time before filing the Form 1042 for the year involved. Accordingly, this repayment may occur at any time up to March 15, the due date of the return (Form 1042). If a withholding agent adjusts by repayment, then the agent may adjust accounts by reducing a subsequent deposit by an amount equal to the amount repaid to the recipient. This reduction may be made in any deposit made during the year of overwithholding or during the year following the year of overwithholding.

Example. James Smith is a nonresident alien individual who is a resident of the United Kingdom. In December 1979, domestic corporation M paid a dividend of $100 to James, at which time M Corporation withheld $30 and paid the balance of $70 to him. On February 14, 1980, James advised M Corporation that according to the income tax convention with the United Kingdom, only $15 tax should have been withheld from the $100 dividend and requested repayment of the $15 which was erroneously withheld. Although M Corporation has already deposited the $30 which was withheld, the corporation repaid James in the amount of $15.

During 1979, M Corporation made no other payments upon which tax was required to be withheld. Therefore, its return on Form 1042 for 1979, filed on March 17, 1980, shows total tax withheld of $30, reduced by an adjustment of $15 repaid to James, and an adjusted total tax withheld of $15. M Corporation claims credit for the overpayment of $15 shown on Form 1042 for 1979. It may reduce by $15 any deposit required to be made of tax withheld during 1980 or request a refund of the overpayment.

The Form 1042S required to be filed by M Corporation for the dividend of $100 paid to James in 1979 must show tax of $30 withheld and tax of $15 released. Form 1042S was required to accompany the Form 1042 for 1979 filed on March 17, 1980. No additional explanation was required to be filed with Form 1042 for 1979 in support of the $15 adjustment claimed.

During 1980, M Corporation made payments from which it withheld tax of $200, all of which occurred in June of that year. On July 15, 1980, M Corporation deposited $185; that is, $200 less the $15 credit claimed on its Form 1042 for 1979. On March 12, 1981, M Corporation filed its return on Form 1042 for 1980, which shows total tax withheld of $200, $185 previously deposited, and $15 allowable credit.

Overwithholding discovered in subsequent year. If a withholding agent discovers after the close of the calendar year and after filing Form 1042 for the year that tax was overwithheld, no adjustment should be made to the amount of tax reported on Forms 1042S (and Form 1042) or on any deposit or payment with respect to a prior calendar year.

Thus, if the erroneous withholding was not discovered before the date on which the Form 1042 is due, the withholding agent should not file an amended Form 1042 return for the prior tax year in order to recover the overpayment or deposit. The recipient foreign payee will have to file a U.S. income tax return (Form 1040NR or Form 1120F) or, if such a tax return has already been filed, a claim for refund (amended Form 1040NR or 1120F) to recover the amount overwithheld after the Form 1042 return has been filed by the withholding agent.

The rule for handling adjustments of overwithheld tax is to facilitate reconciliation of the amount of a withholding agent's tax liability with the amount of tax deposited or paid for a calendar year and to avoid the possibility that a foreign payee could obtain a refund from both the withholding agent and the Federal Government. Additionally, this rule will relieve a withholding agent from having to refund the overwithholding out of the agent's own funds after the overwithheld tax has been deposited or paid and Form 1042 return filed for the calendar year.

When U.S. Taxpayer Identifying Numbers are Required

Before a withholding agent is authorized to allow an exemption from withholding for any payee who is subject to regular U.S. (or Virgin Islands) income tax, the payee's U.S. taxpayer identifying number must be furnished to the withholding agent. These payees include resident alien individuals, regardless of whether they are living outside the United States, and all foreign payees with income effectively connected with the conduct of a trade or business in the United States.

This identifying number also is required to be furnished by the withholding agent on the Form 1042S filed with the Internal Revenue Service for such foreign payees with effectively connected income. These identifying numbers are linked to the identity of the payee and are correlated on the magnetic tape files of the Service to assure that a payee has met all U.S. tax obligations.

Unless a foreign payee who is not subject to regular U.S. (or Virgin Islands) income tax happens to have a U.S. identifying number for other reasons, and wishes to furnish such number, the payee is not required either to obtain one or to furnish one to withholding agents on Form 1001 in order to claim a reduced rate or exemption from withholding under a tax treaty.

Every withholding agent must furnish an employer identification number on the annual Form 1042 tax return and on each Form 1042S. Under no circumstances should a withholding agent use on Forms 1042, 1042S, or FTD512 the identification number of the principal or person for whom the individual is making payments of income subject to withholding. Since the amounts on these forms are verified by the Service, correct identification of the taxpayer (withholding agent) with tax deposits during the year is essential to avoid unnecessary correspondence, deficiency assessments, penalties, interest, or refunds.

The U.S. taxpayer identifying number is a social security number in the case of an individual and an employer identification number in all other cases. If a payee who is subject to regular U.S. income tax does not have a taxpayer identifying number, that payee should apply for one on Form SS-4 or SS-5, available from Internal Revenue Service or Social Security Administration district offices.

Returns Required

Form 1042, *U.S. Annual Return of Income Tax To Be Paid at Source (Under Chapter 3,Internal Revenue Code).* Every U.S. and Canadian withholding agent who has the control, receipt, custody, disposal, or payment of fixed or determinable annual or periodic income (as previously defined), must file an annual return on Form 1042 on or before March 15 of the year following the end of a calendar year. Form 1042 must be filed even though no income tax was withheld and deducted because of a specific exemption under Chapter 3 or under an income tax treaty between the United States and a foreign country.

Form 1042, accompanied by Forms 1042S, must be filed by withholding agents with the Internal Revenue Service Center, Philadelphia, PA 19255.

See Form 1042 and its instructions for further information on how to complete the form and its accompanying Forms 1042S.

Form 1042S, *Income Subject to Withholding Under Chapter 3, Internal Revenue Code.* Every U.S. withholding agent is required to transmit with the annual Form 1042 return the information required to be reported on Form 1042S. This information may be furnished either on magnetic tape in accordance with the applicable Revenue Procedure or on an original paper Form 1042S. A separate Form 1042S (or tape record) is required for each payee (recipient) of income to whom payments were made during the preceding calendar year regardless of whether tax was withheld or required to be withheld. A separate Form 1042S may be used for each type of income that was paid to the same payee; or more than one specific type of income may be reported on the same Form 1042S for the same payee.

A Form 1042S is required for each recipient even though tax was not withheld or required to be withheld because the income payment

was exempt from tax under the Internal Revenue Code or under a U.S. income tax treaty. When the amount of the tax withheld during the calendar year has been adjusted for overwithheld amounts, only the net amount of withheld tax should be reflected on the Form 1042S.

Care should be taken in entering on Form 1042S the proper country address and country code for each payee's latest country of legal residence that is available from information submitted to the withholding agent.

Statements to payees. Withholding agents are required to furnish a statement to each payee with respect to whom a Form 1042S (or magnetic tape report) is being filed with the Internal Revenue Service. A copy of Form 1042S may be used for this purpose. However, withholding agents need not use a copy of the official Form 1042S, but may provide payees with the information in conjunction with or on other (commercial) statements or notices. Such payee statements must clearly identify the type of income (as described on the official form), the amount of tax withheld, the withholding rate (including 0% if exempt), and the country involved. Also, the statement should include the legend that, "this information is being furnished to the U.S. Internal Revenue Service."

Tax Treaty Tables

The United States has income tax treaties (or conventions) with a number of foreign countries under which residents (sometimes limited to citizens) of those countries are taxed at a reduced rate or are exempt from U.S. income taxes on certain amounts of income received from within the United States.

Three tables follow:

Table 1 is provided to show the withholding agent where the full text of each treaty and protocol may be found in either the Internal Revenue Bulletin or the Internal Revenue Cumulative Bulletins.

Table 2 lists the withholding rates on income other than personal service income.

Table 3 lists the different types of personal service income that are entitled to an exemption from, or reduction in, withholding.

Income that is exempted from U.S. income taxes under these treaties is not included in gross income of the nonresident alien individual for U.S. income tax purposes. To the extent this income is exempt under the treaty, it is likewise not subject to withholding at the source under the statutory rules discussed in this publication.

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Table 1.—List of Tax Conventions

Country	Official text symbol	Effective date	Citation	Applicable Treasury decisions
Australia	TIAS 2880[1]	Jan. 1, 1953	1958-2 C.B. 1029	6108, 1954-2 C.B. 614.
Austria	TIAS 3923	Jan. 1, 1957	1957-2 C.B. 985	6322, 1958-2 C.B. 1038.
Belgium	TIAS 7463	Jan. 1, 1971	1973-1 C.B. 619	None issued.
Belgium[2]				
Supplemental	TIAS 2833	Jan. 1, 1953	1954-2 C.B. 626	6056, 1954-1 C.B. 132; 6160, 1956-1 C.B. 815.
Supplemental[3]	TIAS 4280	Jan. 1, 1959	1960-1 C.B. 740 & 753	6438 1960-1 C.B. 739, 6469 1960-1 C.B. 752.
Canada[5]	TS 983[4]	Jan. 1, 1941	1943 C.B. 526	5206, 1943 C.B. 526.
Supplemental	TIAS 2347	Jan. 1, 1951	1955-1 C.B. 624	6047, 1953-2 C.B. 59.
Supplemental	TIAS 3916	Jan. 1, 1957	1957-2 C.B. 1014	
Supplemental	TIAS 6415	Dec. 20, 1967	1968-1 C.B. 628	
Denmark	TIAS 1854	Jan. 1, 1948	1950-1 C.B. 77	5692, 1949-1 C.B. 104; 5777, 1950-1 C.B. 76.
Finland	TIAS 7042	Feb. 28, 1971	1971-1 C.B. 513	None issued.
France	TIAS 6518	Jan. 1, 1967	1968-2 C.B. 691	6986, 1969-1 C.B. 365.
Protocol	TIAS 7270	Jan. 1, 1970	1972-1 C.B. 438	
Protocol	TIAS 9500	Jan. 1, 1979	1979-2 C.B. 411	
Germany	TIAS 3133	Jan. 1, 1954	1955-1 C.B. 635	6122, 1955-1 C.B. 641.
Protocol	TIAS 5920	Various	1966-1 C.B. 360	
Greece	TIAS 2902	Jan. 1, 1953	1958-2 C.B. 1054	6109, 1954-2 C.B. 638.
Protocol	TIAS 2902	Jan. 1, 1953	1958-2 C.B. 1059	
Hungary	TIAS 9560	Jan. 1, 1980	1980-1 C.B. 333	None issued.
Iceland	TIAS 8151	Jan. 1, 1976	1976-1 C.B. 442	None issued.
Ireland	TIAS 2356	Jan. 1, 1951	1958-2 C.B. 1060	5897, 1952-1 C.B. 89.
Italy	TIAS 3679	Jan. 1, 1956	1956-2 C.B. 1096	6215, 1956-2 C.B. 1105.
Japan	TIAS 7365	Jan. 1, 1973	1973-1 C.B. 630	None issued.
Korea	TIAS 9506	Jan. 1, 1980	1979-2 C.B. 435	None issued.
Luxembourg	TIAS 5726	Jan. 1, 1964	1965-1 C.B. 615	
Netherlands	TIAS 1855	Jan. 1, 1947	1950-1 C.B. 93	5690, 1949-1 C.B. 92; 5778, 1950-1 C.B. 92.
Supplemental	TIAS 3366	Nov. 10, 1955	1956-2 C.B. 1116	6153, 1955-2 C.B. 777.
Supplemental	TIAS 6051	Jan. 1, 1967	1967-2 C.B. 472	
Netherlands Antilles	TIAS 3367	Jan. 1, 1955	1956-2 C.B. 1116	6153, 1955-2 C.B. 777.
Protocol	TIAS 5665	Various	1965-1 C.B. 624	
New Zealand	TIAS 2360	Jan. 1, 1951	1958-2 C.B. 1071	5957, 1953-1 C.B. 238.
Norway	TIAS 7474	Jan. 1, 1971	1973-1 C.B. 669	None issued.
Pakistan	TIAS 4232	Jan. 1, 1959	1960-2 C.B. 646	6431, 1960-1 C.B. 755.
Poland	TIAS 8486	Jan. 1, 1974	1977-1 C.B. 416	None issued.
Romania	TIAS 8228	Jan. 1, 1974	1976-2 C.B. 492	None issued.
South Africa	TIAS 2510	July 1, 1946	1954-2 C.B. 651	None issued.
Protocol	TIAS 2510	July 1, 1948	1954-2 C.B. 655	
Sweden	TS 958	Jan. 1, 1940	1940-2 C.B. 43	4975, 1940-2 C.B. 43.
Supplemental	TIAS 5656	Various	1965-1 C.B. 626	
Switzerland	TIAS 2316	Jan. 1, 1951	1955-2 C.B. 815	5867, 1951-2 C.B. 75; 6149, 1955-2 C.B. 814.
Trinidad and Tobago	TIAS 7047	Jan. 1, 1970	1971-2 C.B. 479	None issued.
Union of Soviet Socialist Republics	TIAS 8225	Jan. 1, 1976	1976-2 C.B. 463	None issued.
United Kingdom	TIAS 9682	Jan. 1, 1975	1980-1 C.B. 394	None issued.
United Kingdom[6]	TIAS 1546	Jan. 1, 1945	1947-1 C.B. 209	5532, 1946-2 C.B. 73; 5569, 1947-2 C.B. 100.
Supplemental	TIAS 3165	Jan. 19, 1955	1957-1 C.B. 665	
Supplemental	TIAS 4124	Jan. 1, 1956	1958-2 C.B. 1078	
Supplemental[3]	TIAS 4141	Jan. 1, 1959	1960-2 C.B. 653	6437, 1960-1 C.B. 767.
Supplemental	TIAS 6089	Jan. 1, 1966	1966-2 C.B. 582	6898, 1966-2 C.B. 567.

[1] Treaties and Other International Acts Series.
[2] Applies only to the following former Belgian overseas territories: Democratic Republic of the Congo (Zaire), Republic of Rwanda, and Republic of Burundi.
[3] As extended to overseas territories or former territories.
[4] Treaty Series.
[5] The Canadian Treaty also may be found in Publication 597, *Information on the United States—Canada Income Tax Treaty.*
[6] Applies only to British overseas territories and former territories.

Table 2.—Withholding Tax Rates on Income Other Than Compensation for Personal Services Under Chapter 3, Internal Revenue Code, and Income Tax Treaties

Income code number		1	2	3	5			6	7	9	10	11	12	13	14
Country of residence of payee					Interest on tax-free covenant bonds			Dividends paid by a				Copyright royalties			
					Bonds issued before Jan. 1, 1934										
Name	Code	Interest paid by U.S. obligors general	Interest on real property mortgage	Interest paid to a controlling foreign corporation	If obligor assumes over 2% of tax	If obligor assumes 2% or less of tax	Maturity date extended on or after 1/1/34 and obligor assumes over 27½% of tax	U.S. corporation general[a]	U.S. subsidiary to foreign parent corporation[a]	Capital gains	Industrial royalties	Motion pictures and television	Other	Real property income and natural resources royalties	Pensions and annuities
Antigua[k]	AC	30	30	30	2	30	27½	[c,h]15	[b,c,h]5	30	[c,h]0	[c,h]0	[c,h]0	[c,h]15	[d]0
Australia	AS	30	30	30	2	30	27½	[c,h]15	[c,h]15	30	30	30	[h]0	30	0
Austria	AU	[g]0	30	[h]0	[h]0	[h]0	[h]0	[h]15	[b,h]5	30	[h]0	[h]10	[h]0	30	[d]0
Barbados[k]	BB	30	30	30	2	30	27½	[c,h]15	[b,c,h]5	30	[c,h]0	[c,h]0	[c,h]0	[c,h]15	[d]0
Belgium	BE	[g]15	[g]15	[g]15	2	[g]15	[g]15	[g]15	[g]15	[e,g,m]0	[g]0	[h]0	[g]0	30	[d,l]0
Belize (British Honduras)[k]	BH	30	30	30	2	30	27½	[c,h]15	[b,c,h]5	30	[c,h]0	[c,h]0	[c,h]0	[c,h]15	[d]0
British Virgin Islands[k]	VI	30	30	30	2	30	27½	[c,h]15	[b,c,h]5	30	[c,h]0	[c,h]0	[c,h]0	[c,h]15	[d]0
Burundi	BY	[h]15	[h]15	[h]15	2	[h]15	[h]15	[h]15	[h]15	30	[h]0	[h]0	[h]0	30	[d]0
Canada	CA	[h]15	[h]15	[h]15	2	[h]15	[h]15	[c,h]15	[c,h]15	[h]0	[h]15	[h]15	[h]0	[h]15	0
Denmark	DA	[h]0	[h]0	[h]0	[h]0	[h]0	[h]0	[h]15	[b]5	30	[h]0	[h]0	[h]0	30	[d]0
Dominica[k]	DO	30	30	30	2	30	27½	[c,h]15	[b,c,h]5	30	[c,h]0	[c,h]0	[c,h]0	[c,h]15	[d]0
Falkland Islands[k]	FA	30	30	30	2	30	27½	[c,h]15	[b,c,h]5	30	[c,h]0	[c,h]0	[c,h]0	[c,h]15	[d]0
Finland	FI	[g]0	[g]0	[g]0	[g]0	[g]0	[g]0	[g]15	[b,g]5	[e,g,m]0	[g]5	[g]0	[g]0	30	[d,l]0
France	FR	[g,q]10	[g,q]10	[g,q]10	2	[g,q]10	[g,q]10	[g]15	[b,g]5	[e,g,m]0	[g]5	[g]0	[g]0	30	[d,l]0
Gambia[k]	GA	30	30	30	2	30	27½	[c,h]15	[b,c,h]5	30	[c,h]0	[c,h]0	[c,h]0	[c,h]15	[d]0
Germany, Fed. Rep. of	GE	[g]0	[g]0	[g]0	[g]0	[g]0	[g]0	[g]15	[g]15	[e,g,m]0	[g]0	[g]0	[g]0	30	[d]0
Greece	GR	[h]0	[h]0	30	[h]0	[h]0	[h]0	30	30	30	[h]0	30	[h]0	30	[d]0
Grenada[k]	GJ	30	30	30	2	30	27½	[c,h]15	[b,c,h]5	30	[c,h]0	[c,h]0	[c,h]0	[c,h]15	[d]0
Hungary	HU	[g]0	[g]0	[g]0	[g]0	[g]0	[g]0	[g]15	[b,g]5	[g,m]0	[g]0	[g]0	[g]0	30	[d,l]0
Iceland	IC	[g]0	[g]0	[g]0	[g]0	[g]0	[g]0	[g]15	[b,g]5	[e,g,m]0	[g]0	30	[g]0	30	[d,l]0
Ireland	EI	[c,h]0	[c,h]0	30	[c,h]0	[c,h]0	[c,h]0	[c,h]15	[b,c,h]5	30	[c,h]0	[c,h]0	[c,h]0	[c,h]15	[d]0
Italy	IT	30	30	30	2	30	27½	[h]15	[b,h]5	30	[h]0	[h]0	[h]0	30	[d]0
Jamaica[k]	JM	30	30	30	2	30	27½	[c,h]15	[b,c,h]5	30	[c,h]0	[c,h]0	[c,h]0	[c,h]15	[d]0
Japan	JA	[g]10	[g]10	[g]10	2	[g]10	[g]10	[g]15	[b,g]10	[e,g,m]0	[g]10	[g]10	[g]10	30	[d]0
Korea, Rep. of	KS	[g]12	[g]12	[g]12	2	[g]12	[g]12	[g]15	[b,g]10	[e,g,m]0	[g]15	[g]10	[g]10	30	[d,l]0
Luxembourg[j]	LU	[h]0	30	[h]0	[h]0	[h]0	[h]0	[h]15	[b,h]5	30	[h]0	[h]0	[h]0	30	[d]0
Malawi[k]	MI	[c,h]0	[c,h]0	30	[c,h]0	[c,h]0	[c,h]0	[c,h]15	[b,c,h]5	30	[c,h]0	[c,h]0	[c,h]0	[c,h]15	[d]0
Montserrat[k]	MH	30	30	30	2	30	27½	[c,h]15	[b,c,h]5	30	[c,h]0	[c,h]0	[c,h]0	[c,h]15	[d]0
Netherlands	NL	[g]0	[g]0	[g]0	[g]0	[g]0	[g]0	[g]15	[b,g]5	[e,g,m]0	[g]0	[g]0	[g]0	30	[d]0
Netherlands Antilles[n]	NA	[h]0	30	30	[h]0	[h]0	[h]0	[h]15	[b,h]5	30	[h]0	[h]0	[h]0	30	[d]0

New Zealand	NZ	30	30	30	2	30	27½	[h]15	[b,h]5	30	30	[h]0	30	30	30
Norway	NO	[g]0	[g]0	[g]0	[g]0	[g]0	[g]0	[g]15	[g]10	[e,g,m]0	[g]0	[h]0	[g]0	30	[d,l]0
Pakistan[i]	PK	30	30	30	2	30	27½	30	[b,h]15	30	[h]0	30	[h]0	30	[d,l]0
Poland	PL	[g]0	[g]0	[g]0	[g]0	[g]0	[g]0	[g]15	[b,g]10	[e,g,m]0	[g]10	[g]10	[g]10	30	30
Romania	RO	[g]10	[g]10	[g]10	2	[g]10	[g]10	[g]10	[g]10	[e,g]0	[g]15	[g]10	[g]10	30	[d,l]0
Rwanda	RW	[h]15	[h]15	[h]15	2	[h]15	[h]15	[h]15	[h]15	30	[h]0	[h]0	[h]0	30	[d]0
St. Christopher-Nevis-Anguilla[k]	SC	30	30	30	2	30	27½	[c,h]15	[b,c,h]5	30	[c,h]0	[c,h]0	[c,h]0	[c,h]15	[d]0
St. Lucia[k]	ST	30	30	30	2	30	27½	[c,h]15	[b,c,h]5	30	[c,h]0	[c,h]0	[c,h]0	[c,h]15	[d]0
St. Vincent[k]	VC	30	30	30	2	30	27½	[c,h]15	[b,c,h]5	30	[c,h]0	[c,h]0	[c,h]0	[c,h]15	[d]0
Seychelles[k]	SE	30	30	30	2	30	27½	[c,h]15	[b,c,h]5	30	[c,h]0	[c,h]0	[c,h]0	[c,h]15	[d]0
Sierra Leone[k]	SL	30	30	30	2	30	27½	[c,h]15	[b,c,h]5	30	[c,h]0	[c,h]0	[c,h]0	[c,h]15	[d]0
South Africa	SF	30	30	30	2	30	27½	30	30	30	30	30	30	30	30
Sweden	SW	[h]0	[h]0	[h]0	[h]0	[h]0	[h]0	[h]15	[b,h]5	[h]0	0	0	0	30	[d]0
Switzerland	SZ	[h]5	[h]5	[h]5	2	[h]5	[h]5	[h]15	[b,h]5	30	[h]0	[h]0	[h]0	30	[d]0
Trinidad & Tobago	TD	30	30	30	2	30	27½	30	30	30	[g]15	30	[g]0	30	[d,l]0
Union of Soviet Socialist Republics	UR	[g]0	30	30	2	30	27½	30	30	[g]0	0	0	0	30	30
United Kingdom	UK	[g]0	[g]0	[g]0	[g]0	[g]0	[g]0	[g]15	[b,g]5	30	[g]0	[h]0	[g]0	30	[d,l]0
Zaire	CG	[h]15	[h]15	[h]15	[g]0	[h]15	[h]15	[h]15	[h]15	30	[h]0	[h]0	[h]0	30	[d]0
Zambia[k]	ZA	[c,h]0	[c,h]0	30	[c,h]0	[c,h]0	[c,h]0	[c,h]15	[b,c,h]5	30	[c,h]0	[c,h]0	[c,h]0	[c,h]15	[d]0
Other countries	.....	30	30	30	2	30	27½	30	30	30	30	30	30	30	30

[a] No U.S. tax is imposed upon a dividend paid by a U.S. corporation which has less than 20% of its gross income from U.S. sources for the 3-year period preceding the declaration of such dividend. (See section 861(a)(2)(A) of the Internal Revenue Code.)

[b] The reduced rate applies to dividends paid by a subsidiary to a foreign parent corporation having the required percentage of stock ownership. In some cases, the income of the subsidiary must meet certain requirements (e.g. a certain percentage of its total income must consist of income other than dividends and interest).

[c] The exemption or reduction in rate applies only if the recipient is subject to tax on such income in the country of residence. Otherwise a 30 percent rate applies. In the case of Canada, this requirement applies to intercorporate dividends only.

[d] Exemption does not apply to U.S. Government (Federal, State, or local) pensions and annuities; 30% rate applies to such pensions and annuities.

[e] The treaty exemption applicable to U.S. source capital gains includes capital gains under section 871(a)(2) if received by a nonresident alien present in the U.S. for a period not exceeding 183 days. (182 days for Belgium.)

[f] Includes alimony.

[g] Under the treaty the exemption or reduction in rate does not apply if the recipient has a permanent establishment in the United States and the property giving rise to the income is effectively connected with such permanent establishment. Notwithstanding the treaty, if the income is not effectively connected with the conduct of a trade or business in the United States by the recipient, such recipient will be deemed not to have a permanent establishment in the United States under section 894(b), I.R.C.

[h] Under the treaty the exemption or reduction in rate does not apply if the recipient is engaged in the conduct of a trade or business in the United States through a permanent establishment located in the United States. However, if the income is not effectively connected with the conduct of a trade or business in the United States by the recipient, such recipient will be deemed not to have a permanent establishment in the United States for the purpose of applying the reduced treaty rate to the item of income concerned. Section 894(b), I.R.C.

[i] Bangladesh has not indicated that it wishes to assume the responsibilities or exercise the rights of the United States—Pakistan income tax treaty.

[j] Exemption is not available when paid from a fund, under an employees' pension or annuity plan, contributions to which are deductible under the tax laws of the United States in determining taxable income of the employer.

[k] The former United Kingdom treaty (proclaimed by the President of the United States on July 30, 1946) as it was in effect prior to the Supplementary Protocol of September 9, 1966, applies to British overseas territories and former territories. Yemen has not indicated that it wishes to assume the responsibilities or exercise the rights of the United States—United Kingdom income tax treaty. The United States terminated the extension of the treaty to (Southern) Rhodesia, effective January 1, 1974. Nigeria terminated participation in the United States—United Kingdom income tax treaty for tax years beginning after 1978.

[l] Exemption from or reduction in rate of tax not applicable in the case of income of holding companies entitled to special tax benefits under the laws of Luxembourg.

[m] Exemption does not apply to gains from the sale of real property; 30% rate applies to such sales.

[n] The exemption or reduced rates applicable to U.S. source dividends, interest, industrial, and literary royalties do not apply when these items are paid to a Netherlands Antilles investment or holding company entitled to special tax benefits under Netherlands Antilles law and owned by persons or corporations not resident in the Netherlands.

[o] The exemption applies only to interest on credits, loans, and other indebtedness connected with the financing of trade between the U.S. and the U.S.S.R. It does not include interest derived from the conduct of a general banking business.

[p] The exemption only applies to gains from the sale or other disposition of property acquired by gift or inheritance.

[q] Interest paid on a loan granted by a U.S. bank is exempt from U.S. tax except when footnote (g) applies.

Table 3.—Compensation for Personal Services Performed Within United States Exempt from Withholding and U.S. Income Tax Under Income Tax Treaties

Country (1)	Category of Personal Services: Code[1] (2)	Category of Personal Services: Purpose (3)	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
Antigua[25]	16	Independent personal services[26]	183 days	Antigua resident contractor[17]	No limit	XI
	17	Dependent personal services	183 days	Antigua resident[17]	No limit	XI
	18	Teaching	2 years	U.S. educational institution	No limit	XVIII
	19	Studying and Training: Remittances or allowances[13]	No limit	Antigua resident[17]	No limit	XIX
Australia	16	Independent personal services[26]	183 days	Australian resident contractor	No limit	IX
	17	Dependent personal services	183 days	Australian resident	No limit	IX
	18	Teaching	2 years	U.S. educational institution	No limit	XIII
	19	Studying and training		No specific provisions		
Austria	15	Scholarship or fellowship grant	No limit	Any U.S. or foreign resident[5]	No limit	XIII(3)
	16	Independent personal services[26]	183 days	Austrian resident contractor	No limit	X
			183 days	Other foreign or U.S. resident contractor	$3,000	X
	17	Dependent personal services	183 days	Austrian resident	No limit	X
	18	Teaching	183 days	Other foreign or U.S. resident	$3,000	X
	19	Studying and training:	2 years	U.S. educational institution	No limit	XII
		Remittances or allowances	No limit	Any foreign resident	No limit	XIII(1) & (2)
		Compensation while gaining experience[2]	1 year	Austrian resident	$10,000[3]	XIII(4)
Barbados—same as Antigua.						
Belgium	15	Scholarship or fellowship grant	5 years	Any U.S. or foreign resident[5]	No limit	21(1)
	16	Independent personal services[26]	183 days	Any contractor	No limit	14(2)(a)(b)
		Public entertainment[26]	90 days	Any contractor	$3,000	14(2)(c)
	17	Dependent personal services	182 days	Belgian resident	No limit	15
	18	Teaching	2 years	U.S. educational institution	No limit[4]	20
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	21(1)
		Compensation during training	5 years	U.S. resident	$2,000 p.a.	21(1)
			12 consec. mo.	Belgian resident	$5,000	21(2)(b)
		Compensation while gaining experience[2]	12 consec. mo.	Belgian resident	$5,000	21(2)(a)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	$10,000	21(3)
Belize (British Honduras)—same as Antigua.						
British Virgin Islands—same as Antigua.						
Burundi[6]	16	Independent personal services[26]	183 days	Burundi resident contractor[6]	No limit	XI
			90 days	Other foreign or U.S. resident contractor	$3,000	XI

	17 Dependent personal services	183 days	Burundi resident[6]	No limit	XI
		90 days	Other foreign or U.S. resident	$3,000	XI
	18 Teaching	2 years	U.S. educational institution	No limit	XIII
	19 Studying and training:				
	Remittances or allowances	No limit	Any foreign resident	No limit	XIV
Canada	16 Independent personal services[26]	183 days	Canadian resident contractor	No limit	VII
		183 days	Other foreign or U.S. resident contractor	$5,000	VII
	Director's fees[7]	No limit	U.S. Corporation	No limit	XIII B
	17 Dependent personal services	183 days	Canadian resident	No limit	VII
		183 days	Other foreign or U.S. resident	$5,000	VII
	18 Teaching	2 years	U.S. educational institution	No limit	VIII A
	19 Studying and training:				
	Remittances or allowances	No limit	Canadian resident	No limit	IX
Denmark	16 Independent personal services[26]	180 days	Danish resident contractor	No limit	XI
		90 days	Other foreign or U.S. resident contractor	$3,000	XI
	17 Dependent personal services	180 days	Danish resident	No limit	XI
		90 days	Other foreign or U.S. resident	$3,000	XI
	18 Teaching	2 years	U.S. educational institution	No limit	XIV
	19 Studying and training:				
	Remittances or allowances	No limit	Any foreign resident	No limit	XIII
Dominica—same as Antigua.					
Falkland Islands—same as Antigua.					
Finland	15 Scholarship or fellowship grant	5 years	Any U.S. or foreign resident[5]	No limit	21(1)
	16 Independent personal services[26]	183 days	Any resident contractor	No limit	18
	17 Dependent personal services	183 days	Any foreign resident[20]	No limit	19
	18 Teaching	2 years	U.S. educational institution	No limit[4]	20
	19 Studying and training:				
	Remittances or allowances	5 years	Any foreign resident	No limit	21(1)
	Compensation during training	5 years	U.S. or any foreign resident	$2,000 p.a.[8]	21(1)
		12 consec. mo.	Finnish resident	$5,000[8]	21(2)
	Compensation while gaining experience[2]	12 consec. mo.	Finnish resident	$5,000[8]	21(2)
	Compensation under U.S. Government program	1 year	U.S. Government or its contractor	$10,000[8]	21(3)
France	15 Scholarship or fellowship grant	5 years	Any U.S. or foreign resident[5]	No limit	18(1)
	16 Independent personal services[26]	183 days	Any contractor	No limit	14
	17 Dependent personal services	183 days	Any foreign resident	No limit	15
	18 Teaching	2 years	U.S. educational institution	No limit[4]	17
	19 Studying and training:				
	Remittances or allowances	5 years	Any foreign resident	No limit	18(1)
	Compensation during training	5 years	U.S. resident	$2,000 p.a.	18(1)
		1 year	French resident	$5,000	18(2)
	Compensation while gaining experience	1 year	French resident	$5,000	18(2)
Gambia—same as Antigua.					

Table 3.—Continued

Country (1)	Category of Personal Services: Code[1] (2)	Category of Personal Services: Purpose (3)	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
Germany	15	Scholarship or fellowship grant	No limit	Any U.S. or foreign resident[5]	No limit	XIII(3)
	16	Independent personal services[26]	183 days	German resident contractor	No limit	X
	17	Dependent personal services	183 days	German resident	No limit	X
	18	Teaching	2 years	U.S. educational institution	No limit	XII
	19	Studying and training:				
		Remittances or allowances	No limit	Any foreign resident	No limit	XIII(1) & (2)
		Compensation while gaining experience[2]	1 year	German nonprofit organization	$10,000	XIII(4)
Greece	16	Independent personal services[26]	183 days	Greek resident contractor	No limit	X
	17	Dependent personal services	183 days	Other foreign or U.S. resident contractor	$10,000	X
	18	Teaching	183 days	Greek resident	No limit	X
	19	Studying and training:	183 days	Other foreign or U.S. resident	$10,000	X
		Remittances or allowances	3 years	U.S. educational institution	No limit	XII
Grenada—same as Antigua.			No limit	Any foreign resident	No limit	XIII
Hungary	16	Independent personal services[26]				
	17	Dependent personal services[20]	183 days	Any contractor	No limit	13
	18	Teaching[4]	183 days	Any foreign resident	No limit	14
	19	Studying and training:[27]	2 years	U.S. educational institution	No limit	17
		Remittances or allowances[13]	No limit	Any foreign resident	No limit	18(1)
Iceland	15	Scholarship or fellowship grant	5 years	Any U.S. or foreign resident[5]	No limit	22(1)
	16	Independent personal services[26]	182 days	Any resident contractor	No limit	18
		Public entertainment[26]	90 days	Any resident contractor	$100 per day	18
	17	Dependent personal services	182 days	Iceland resident[21]	No limit	19
	18	Teaching[4]	2 years	U.S. educational institution	No limit	21
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	22(1)
		Compensation during training	5 years	U.S. or any foreign resident	$2,000 p.a.	22(1)
		Compensation while gaining experience	12 consec. mo.	Iceland resident	$5,000	22(2)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	$10,000	22(3)
Ireland	16	Independent personal services[26]	183 days	Irish resident contractor	No limit	XI
	17	Dependent personal services	183 days	Irish resident	No limit	XI
	18	Teaching	2 years	U.S. educational institution	No limit	XVIII
	19	Studying and training:				
		Remittances or allowances[13]	No limit	Irish resident	No limit	XIX
Italy	16	Independent personal services[26]	90 days	Italian resident contractor	No limit[9]	XI
	17	Dependent personal services	90 days	Italian resident	No limit[9]	XI
	18	Teaching	2 years	U.S. educational institution	No limit	XIII
	19	Studying and training:				
		Remittances or allowances	No limit	Italian resident	No limit	XII
Jamaica—same as Antigua.						

Japan	15	Scholarship or fellowship grant	5 years	Any U.S. or foreign resident[5]	No limit	20(1)
	16	Independent personal services[26]	183 days	Any contractor	No limit	17
		Public entertainment[26]	90 days	Any contractor	$3,000[8]	17
	17	Dependent personal services	183 days	Japanese resident[20,21,22]	No limit	18
	18	Teaching	2 years	U.S. educational institution	No limit[4]	19
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	20(1)
		Compensation during training	5 years	U.S. or any foreign resident	$2,000 p.a.[6]	20(1)
		Compensation while gaining experience	12 consec. mo.	Japanese resident	$5,000[8]	20(2)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	$10,000[8]	20(3)
Korea, Rep. of	15	Scholarship or fellowship grant	5 years	Any U.S. or foreign resident[5]	No limit	21(1)
	16	Independent personal services[26]	182 days	Any contractor	$3,000 p.a.	18
	17	Dependent personal services	182 days	Korean resident[21]	$3,000 p.a.	19
	18	Teaching[4]	2 years	U.S. educational institution	No limit	20
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	21(1)
		Compensation during training	5 years	Any foreign or U.S. resident	$2,000 p.a	21(1)
		Compensation while gaining experience	1 year	Korean resident	$5,000	21(2)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	$10,000	21(3)
Luxembourg	15	Scholarship or fellowship grant	No limit	Any foreign resident	No limit	XIV(1)
	16	Independent personal services[26]	180 days	Luxembourg resident	No limit	XII
			180 days	Any U.S. or foreign resident	$3,000	XII
	17	Dependent personal services[10]	180 days	Luxembourg resident	No limit	XII
			180 days	Any U.S. or foreign resident	$3,000	XII
	18	Teaching	2 years	U.S. educational institution	No limit[11]	XIII
	19	Studying and training:				
		Remittances or allowances	No limit	Any foreign resident	No limit	XIV(1)
		Compensation during training	1 year	Any foreign resident	No limit	XIV(1)
		Compensation while gaining experience[2]	1 year	Any foreign resident	$5,000	XIV(2)
		Compensation under U.S. Government program	1 year	U.S. Government, its contractor, or a foreign resident	$10,000	XIV(3)
Malawi—same as Antigua.						
Montserrat—same as Antigua.						
Netherlands	15	Scholarship or fellowship grant	5 years	Any U.S. or foreign resident[5]	No limit	XVIII(1)
	16	Independent personal services[26]	183 days	Any foreign contractor	No limit	XVI
	17	Dependent personal services	183 days	Any foreign resident	No limit	XVI
	18	Teaching	2 years	U.S. educational institution	No limit[4]	XVII
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	XVIII(1)
		Compensation during training	5 years	U.S. or any foreign resident	$2,000 p.a.	XVIII(1)
		Compensation while gaining experience[2]	1 year	Netherlands resident	$5,000	XVIII(2)
Netherlands Antilles	16	Independent personal services[26]	183 days	Netherlands Antilles resident	No limit	XVI
	17	Dependent personal services	183 days	Netherlands Antilles resident	No limit	XVI
	18	Teaching[18]	2 years	U.S. educational institution	No limit	XVII
	19	Studying and training:				
		Remittances	No limit	Any foreign resident	No limit	XVIII

Table 3.—Continued

Country (1)	Category of Personal Services: Code[1] (2)	Category of Personal Services: Purpose (3)	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
New Zealand	16	Independent personal services[12, 26]	183 days	New Zealand resident	No limit	IX
	17	Dependent personal services	183 days	New Zealand resident	No limit	IX
	18	Teaching	2 years	U.S. educational institution	No limit	XIV
	19	Studying and training:				
		Remittances or allowances	No limit	New Zealand resident	No limit	XV
Norway	15	Scholarship or fellowship grant	5 years	Any U.S. or foreign resident[5]	No limit	16(1)
	16	Independent personal services[26]	182 days	Any resident contractor	No limit	13
		Public entertainment[26]	90 days	Any resident contractor	$3,000	13
	17	Dependent personal services	182 days	Norwegian resident[21]	No limit	14
	18	Teaching[4]	2 years	U.S. educational institution	No limit	15
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	16(1)
		Compensation during training	5 years	U.S. or any foreign resident	$2,000 p.a.	16(1)
		Compensation while gaining experience[2]	12 consec. mo.	Norwegian resident	$5,000	16(2)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	$10,000	16(3)
Pakistan[14]	15	Scholarship or fellowship grant	No limit	Pakistani nonprofit organization	No limit	XIII(1)
	16	Independent personal services[19, 26]	183 days	Pakistani resident contractor	No limit	XI
	17	Dependent personal services[19]	183 days	Pakistani resident	No limit	XI
	18	Teaching	2 years	U.S. educational institution	No limit	XII
	19	Studying and training:				
		Remittances or allowances	No limit	Any foreign resident	No limit	XIII(1)
		Compensation during training	No limit	U.S. or any foreign resident	$5,000 p.a.	XIII(1)
		Compensation while gaining experience[2]	1 year	Pakistani resident	$6,000	XIII(2)
		Compensation while under U.S. Government program	No limit	U.S. Government, its contractor, or any foreign resident employer	$10,000	XIII(3)
Poland	15	Scholarship or fellowship grant	5 years	Any U.S. or foreign resident	No limit	18(1)
	16	Independent personal services[26]	182 days	Any resident contractor	No limit	15
	17	Dependent personal services	182 days	Any foreign resident	No limit	16
	18	Teaching[4]	2 years	U.S. educational institution	No limit	17
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	18(1)
		Compensation during training	5 years	U.S. or any foreign resident	$2,000 p.a.	18(1)
		Compensation while gaining experience	1 year	Polish resident	$5,000	18(2)
		Compensation while under U.S. Government program	1 year	U.S. Government or its contractor	$10,000	18(3)
Romania	15	Scholarship or fellowship grant	5 years	Any U.S. or foreign resident[5]	No limit	20(1)
	16	Independent personal services[26]	182 days	Any resident contractor	No limit	14
		Public entertainment[26]	90 days	Any resident contractor	$3,000	14
	17	Dependent personal services	182 days	Romanian resident	No limit	15
		Public entertainment	89 days	Romanian resident	$2,999.99	15
	18	Teaching[4]	2 years	U.S. educational institution	No limit	19
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	20(1)

		Compensation during training	5 years	U.S. or any foreign resident	$2,000 p.a.	20(1)
		Compensation while gaining experience	1 year	Romanian resident	$5,000	20(2)
		Compensation while under U.S. Government program	1 year	U.S. Government or its contractor	$10,000	20(3)
Rwanda—same as Burundi.						
St. Christopher-Nevis-Anguilla—same as Antigua.						
St. Lucia—same as Antigua.						
St. Vincent—same as Antigua.						
Seychelles—same as Antigua.						
Sierra Leone—same as Antigua.						
South Africa	16	Independent personal services[12, 26]	183 days	South African resident contractor	No limit	II–Protoc
	17	Dependent personal services[12]	183 days	South African resident	No limit	II–Protoc
	18	Teaching	2 years	U.S. educational institution	No limit	IX
	19	Studying and training: Remittances or allowances	No limit	South African resident	No limit	X
Sweden	15	Scholarship or fellowship grant	No limit	Any foreign resident[5]	No limit	XII(1)
	16	Independent personal services[15, 26]	180 days	Swedish resident contractor	No limit	XI(b)(1)
			90 days	Other foreign or U.S. contractor	$3,000	XI(b)(2)
	17	Dependent personal services	180 days	Swedish resident	No limit	XI(b)(1)
			90 days	Other foreign or U.S. resident	$3,000	XI(b)(2)
	18	Teaching	2 years	U.S. educational institution	No limit[4]	XII(3)
	19	Studying and training: Remittances or allowances	No limit	Any foreign resident	No limit	XII(1)
		Compensation under U.S. Government program	No limit	U.S. Government, its contractor, or any foreign resident employer	$10,000	XII(2)
Switzerland	16	Independent personal services[12, 26]	183 days	Swiss resident contractor	No limit	X
			183 days	Other foreign or U.S. contractor	$10,000	X
	17	Dependent personal services[12]	183 days	Swiss resident	No limit	X
			183 days	Other foreign or U.S. resident	$10,000	X
	18	Teaching	2 years	U.S. educational institution	No limit	XII
	19	Studying and training: Remittances or allowances	No limit	Any foreign resident	No limit	XIII
Trinidad and Tobago	15	Scholarship or fellowship grant	5 years	Any U.S. or foreign resident[5]	No limit	19(1)
	16	Independent personal services[16, 26]	183 days	Any foreign resident contractor	No limit	17
			183 days	Any U.S. contractor	$3,000[8]	17
	17	Dependent personal services[16]	183 days	Any foreign resident	No limit	17
			183 days	Any U.S. resident	$3,000[8]	17
	18	Teaching	2 years	U.S. educational institution or U.S. Government	No limit[4]	18
	19	Studying and training: Remittances or allowances	5 years	Any foreign resident	No limit	19(1)
		Compensation during training	5 years	U.S. or any foreign resident	$2,000 p.a.[8]	19(1)
		Compensation during professional training	5 years	U.S. or any foreign resident	$5,000 p.a.[8]	19(1)
		Compensation while gaining experience	1 year	Trinidad—Tobago resident	$5,000[8]	19(2)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	$10,000[8]	19(3)

Table 3.—Continued

Country (1)	Category of Personal Services: Code[1] (2)	Category of Personal Services: Purpose (3)	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
Union of Soviet Socialist Republics	15	Scholarship or fellowship grant	5 years	Any U.S. or foreign resident	$10,000 p.a.	VI(1)
	16	Independent personal services[26]	183 days	Any U.S. or foreign contractor	No limit	VI(2)
	17	Dependent personal services	183 days	Any U.S. or foreign resident	No limit	VI(2)
	18	Teaching[4,23]	2 years	U.S. educational or scientific institution	No limit	VI(1)
	19	Studying and training:				
		Remittances or allowances	5 years	Any U.S. or foreign resident	$10,000 p.a.	VI(1)
		Compensation while gaining experience	1 year	U.S.S.R. resident	No limit[24]	VI(1)
		Compensation under U.S. Government program	1 year	Any U.S. or foreign resident	No limit	VI(1)
United Kingdom	16	Independent personal services[26]	183 days	Any U.S. or foreign resident contractor[15]	No limit	14
	17	Dependent personal services	183 days	Any U.S. or foreign resident[15]	No limit	15
	18	Teaching[4]	2 years	U.S. educational institution	No limit	20
	19	Studying and training:				
		Remittances or allowances[13]	No limit	Any foreign resident[15]	No limit	21
Zaire (formerly Belgian Congo)—same as Burundi.						
Zambia—same as Antigua.						

[1] Refers to income code numbers under which described in this publication and to be reported on Forms 1042S. Personal services must be performed by a nonresident alien individual who is a resident of the specified treaty country.

[2] Applies only if training or experience is received from a person other than alien's employer.

[3] Annual compensation for services wherever performed.

[4] Does not apply to compensation for research work primarily for private benefit.

[5] Grant must be from a nonprofit organization which may be a U.S. or foreign resident. In the case of Sweden the organization must be located outside the United States.

[6] The former United States—Belgium income tax treaty (which was replaced by a new treaty effective January 1, 1971) applies to the following former Belgium territories which are now independent countries: Burundi, Rwanda, and Zaire. In the case of Rwanda and Zaire which are cross-referenced in the table with "same as Burundi," the employer or payer must be a resident of Rwanda or Zaire, whichever is involved (not a Burundi resident).

[7] Applies only to fees received for attending director's meetings held in Canada.

[8] Reimbursed travel expenses shall not be taken into account in computing any maximum compensation to which the exemption applies.

[9] A limit of $2,000 is contained in the treaty in the case of non-Italian resident employer.

[10] Does not apply to fees of a foreign director of a U.S. corporation.

[11] Does not apply to compensation for research work for other than the U.S. educational institution involved.

[12] Applies to public entertainment in accordance with U.S. reservation rejecting exclusion contained in Art. IX(4) of New Zealand treaty, Art. X(4) of Switzerland treaty, Art. II(3) of the Protocol to the South Africa treaty.

[13] Applies only to full-time student or trainee.

[14] Bangladesh has not indicated that it wishes to assume the responsibilities or exercise the rights of the United States—Pakistan income tax treaty.

[15] Does not apply to compensation paid to public entertainers (actors, artists, musicians, athletes, etc.). The exemption does not apply to U.K. residents if the compensation (including reimbursements) is $15,000 or more, in any tax year.

[16] Does not apply to compensation paid to public entertainers in excess of $100 per day.

[17] In the case of present or former United Kingdom territories and dependencies (identified in the table with cross-reference "same as Antigua"), the employer or payer must be a resident of the particular territory or dependency involved (not an Antigua resident).

[18] Applies only to teacher exchange agreements.

[19] Exemption applies only if the remuneration is subject to tax in the country of residence.

[20] The exemption does not apply where the employee's remuneration is borne by a permanent establishment which the employer has in the United States.

[21] The exemption applies where the employer is a permanent establishment in the treaty country of a resident of any country other than the treaty country.

[22] This exemption does not apply in certain cases where the employee is a substantial owner of that employer and the employer is engaged in certain defined activities.

[23] The exemption is also extended to journalists and correspondents who are temporarily in the U.S. for periods not exceeding 2 years and receive compensation from abroad.

[24] Also exempt are amounts, not in excess of $10,000, received from U.S. sources to provide ordinary living expenses.

[25] The former United Kingdom income tax treaty (proclaimed by the President of the United States on July 30, 1946) as it was in effect prior to the Supplementary Protocol of September 9, 1966, applies to British overseas territories and former territories. Yemen has not indicated that it wishes to assume the responsibilities or exercise the rights of the United States—United Kingdom income tax treaty. The United States terminated the extension of the treaty to (Southern) Rhodesia, effective January 1, 1974. Nigeria terminated participation in the United States—United Kingdom income tax treaty for tax years beginning after 1978.

[26] Withholding at 30% is required because the factors on which the treaty exemption is based are not determinable until after the close of the tax year.

[27] A student or trainee may choose to be treated as a U.S. resident for tax purposes. If the choice is made, it may not be revoked without the consent of the U.S. competent authority.

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